

## Department of Homeland Security

## §217.2

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 processing 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:

*Carrier* refers to the owner, charterer, lessee, or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

*Designated country* refers to Andorra, Australia, Austria, Belgium, Brunei,

Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. Taiwan refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

*Round trip ticket* means any return trip transportation ticket in the name of an arriving Visa Waiver Program applicant on a participating carrier valid for at least 1 year, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, and military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights. A period of validity of 1 year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in Form I-775, Visa Waiver Program Agreement.

(b) *Special program requirements*—(1) *General*. In addition to meeting all of the requirements for the Visa Waiver Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and obtain a travel authorization via the Electronic System for Travel Authorization (ESTA) as provided in §217.5.

(2) *Persons previously removed as deportable aliens*. Aliens who have been deported or removed from the United

States, after having been determined deportable, require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act. Such persons may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as non-immigrants, unless otherwise exempt.

(c) *Restrictions on manner of arrival*—(1) *Applicants arriving by air and sea*. Applicants must arrive on a carrier that is signatory to a Visa Waiver Program Agreement and at the time of arrival must have a round trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the round trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(2) *Applicants arriving at land border ports of entry*. Any Visa Waiver Program applicant arriving at a land border port of entry must provide evidence to the CBP officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border port of entry will be charged a fee as prescribed in §103.7(d)(5) of this chapter for issuance of Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required.

(d) *Aliens in transit*. An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Program, provided the applicant meets all other program requirements.

[62 FR 10351, Mar. 6, 1997, as amended at 62 FR 50999, Sept. 30, 1997; 64 FR 42007, Aug. 3, 1999; 67 FR 7945, Feb. 21, 2002; 68 FR 10957, Mar. 7, 2003; 73 FR 67712, Nov. 17, 2008; 73 FR 79597, Dec. 30, 2008; 75 FR 15992, Mar. 31, 2010; 77 FR 64411, Oct. 22, 2012; 79 FR 17854, Mar. 31, 2014; 84 FR 60318, Nov. 8, 2019; 85 FR 46925, Aug. 3, 2020; 86 FR 54031, Sept. 30, 2021; 87 FR 18980, Apr. 1, 2022; 88 FR 67065, Sept. 29, 2023]

**§ 217.3 Maintenance of status.**

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States after a departure to foreign contiguous territory or adjacent island for the balance of his or her original Visa Waiver Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

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

**§ 217.4 Inadmissibility and deportability.**

(a) *Determinations of inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration

Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable

alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32953, July 18, 1991; 62 FR 10351, Mar. 6, 1997; 74 FR 55738, Oct. 28, 2009]

### §217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air, sea, or land to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization, each nonimmigrant alien intending to travel to the United States by air, sea, or land under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein, and must pay a fee as described in paragraph (h) of this section.

(b) *Time*—(1) *Applicants arriving at air or sea ports of entry.* Each alien falling within the provisions of paragraph (a) of this section and intending to travel by air or sea to the United States under the VWP must receive a travel authorization via ESTA prior to boarding a carrier destined for travel to the United States.

(2) *Applicants arriving at land ports of entry.* Each alien falling within the provisions of paragraph (a) of this section and intending to travel by land to the United States under the VWP must receive a travel authorization via ESTA prior to application for admission to the United States.

(c) *Required elements.* CBP will collect such information as the Secretary deems necessary to issue a travel authorization as reflected in the ESTA application.

(d) *Duration*—(1) *General Rule.* A travel authorization issued under ESTA

will be valid for a period of two years from the date of issuance, unless the passport of the authorized alien will expire in less than two years, in which case the authorization will be valid until the date of expiration of the passport.

(2) *Exception.* For travelers from countries which have not entered into agreements with the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport, a travel authorization issued under ESTA is not valid beyond the six months prior to the expiration date of the passport. Travelers from these countries whose passports will expire in six months or less will not receive a travel authorization.

(3) The Secretary, in consultation with the Secretary of State, may increase or decrease ESTA travel authorization validity period otherwise authorized by subparagraph (1) for a designated VWP country. Notice of any change to ESTA travel authorization validity periods will be published in the FEDERAL REGISTER. The ESTA Web site will be updated to reflect the specific ESTA travel authorization validity period for each VWP country.

(e) *New travel authorization required.* A new travel authorization is required if any of the following occur:

- (1) The alien is issued a new passport;
- (2) The alien changes his or her name;
- (3) The alien changes his or her gender;
- (4) The alien's country of citizenship changes; or
- (5) The circumstances underlying the alien's previous responses to any of the ESTA application questions requiring a "yes" or "no" response (eligibility questions) have changed.

(f) *Limitations*—(1) *Current authorization period.* An authorization under ESTA is a positive determination that an alien is eligible, and grants the alien permission, to travel to the United States under the VWP and to apply for admission under the VWP during the period of time the travel authorization is valid. An authorization under ESTA is not a determination

that the alien is admissible to the United States. A determination of admissibility is made only after an applicant for admission is inspected by a CBP Officer at a U.S. port of entry.

(2) *Not a determination of visa eligibility.* A determination under ESTA that an alien is not eligible to travel to the United States under the VWP is not a determination that the alien is ineligible for a visa to travel to the United States and does not preclude the alien from applying for a visa before a United States consular officer.

(3) *Judicial review.* Notwithstanding any other provision of law, a determination under ESTA is not subject to judicial review pursuant to 8 U.S.C. 217(h)(3)(C)(iv).

(4) *Revocation.* A determination under ESTA that an alien is eligible to travel to the United States to apply for admission under the VWP may be revoked at the discretion of the Secretary.

(g) [Reserved]

(h) *Fee.* (1) Through September 30, 2027, the fee for an approved ESTA is \$21, which is the sum of two amounts: A \$17 travel promotion fee to fund the Corporation for Travel Promotion and a \$4 operational fee to at least ensure recovery of the full costs of providing and administering the system. In the event the ESTA application is denied, the fee is \$4 to cover the operational costs.

(2) Beginning October 1, 2027, the fee for using ESTA is an operational fee of \$4 to at least ensure recovery of the full costs of providing and administering the system.

[73 FR 32452, June 9, 2008, as amended at 75 FR 47708, Aug. 9, 2010; 80 FR 32294, June 8, 2015; 87 FR 18980, Apr. 1, 2022; 87 FR 30773, May 20, 2022]

#### §217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the car-

rier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

[62 FR 10352, Mar. 6, 1997]

#### §217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port of entry will not be admitted under the Visa Waiver Program unless an appropriate official of the carrier transporting the alien electronically transmitted to Customs and Border Protection (CBP) passenger arrival manifest data relative to that alien passenger in accordance with 19 CFR 4.7b or 19 CFR 122.49a. Upon departure from the United States by sea or air of an alien admitted under the Visa Waiver Program, an appropriate official of the transporting carrier must electronically transmit to CBP departure manifest data relative to that alien passenger in accordance with 19 CFR 4.64 and 19 CFR 122.75a.

(b) If a carrier fails to submit the required electronic arrival or departure manifests specified in paragraph (a) of this section, CBP will evaluate the carrier's compliance with immigration requirements as a whole. CBP will inform the carrier of any noncompliance and then may revoke any contract agreements between CBP and the carrier. The carrier may also be subject to fines for failure to comply with manifest requirements or other statutory provisions. CBP will also review each Visa Waiver Program applicant who applies for admission and, on a case-by-case basis, may authorize a waiver under current CBP policy and guidelines or deny the applicant admission into the United States.

[70 FR 17848, Apr. 7, 2005]

## PART 221—ADMISSION OF VISITORS OR STUDENTS

AUTHORITY: 8 U.S.C. 1101, 1103, 1201; 8 CFR part 2.

### § 221.1 Admission under bond.

The district director having jurisdiction over the intended place of residence of an alien may accept a bond on behalf of an alien defined in section 101(a)(15)(B) or (F) of the Act prior to the issuance of a visa to the alien or upon receipt of a request directly from a U.S. consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond; such a bond also may be accepted by the district director with jurisdiction over the port of entry or preinspection station where inspection of the alien takes place. Upon acceptance of such a bond, the district director shall notify the United States consular officer who requested the bond, giving the date and place of acceptance and amount of the bond. All bonds given as a condition of admission of an alien under section 221(g) of the Act shall be executed on Form I-352. For procedures relating to bond riders, acceptable sureties, cancellation, or breaching of bonds, see § 103.6 of this chapter.

[32 FR 9626, July 4, 1967, as amended at 34 FR 1008, Jan. 23, 1969; 62 FR 10352, Mar. 6, 1997]

## PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

Sec.

- 223.1 Purpose of documents.
- 223.2 Application and processing.
- 223.3 Validity and effect on admissibility.

AUTHORITY: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

SOURCE: 59 FR 1464, Jan. 11, 1994, unless otherwise noted.

### § 223.1 Purpose of documents.

(a) *Reentry permit.* A reentry permit allows a permanent resident to apply for admission to the United States upon return from abroad during the period of the permit's validity without

the necessity of obtaining a returning resident visa.

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

[59 FR 1464, Jan. 11, 1994, as amended at 62 FR 10352, Mar. 6, 1997]

### § 223.2 Application and processing.

(a) *Application.* An applicant must submit an application for a reentry permit, refugee travel document, or advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 106.2 and in accordance with the form instructions.

(b) *Filing eligibility—(1) Reentry permit.* An applicant for a reentry permit must file such application while in the United States and in status as a lawful permanent resident or conditional permanent resident.

(2) *Refugee travel document.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an applicant for a refugee travel document must submit the application while in the United States and in valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act or is a permanent resident who received such status as a direct result of his or her asylum or refugee status.

(ii) *Discretionary authority to accept a refugee travel document application from an alien not within the United States.* As a matter of discretion, the Service office with jurisdiction over a port-of-entry or pre-flight inspection location where the alien is seeking admission, or the overseas Service office where the alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States,