

Department of Homeland Security

§ 235.6

§ 235.4 Withdrawal of application for admission.

The Attorney General may, in his or her discretion, permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings under section 240 of the Act or expedited removal under section 235(b)(1) of the Act. The alien's decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(b) of this chapter.

[62 FR 10358, Mar. 6, 1997; 62 FR 15363, Apr. 1, 1997; 65 FR 82256, Dec. 28, 2000]

§ 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility will be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the immigration officer that any person in the United States being examined under this section is *prima facie* removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in sec-

tion 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person will be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

[62 FR 10358, Mar. 6, 1997, as amended at 74 FR 2836, Jan. 16, 2009; 74 FR 25388, May 28, 2009]

§ 235.6 Referral to immigration judge.

(a) *Notice—(1) Referral by Form I-862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I-862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident or refugee, or granted asylum, or, upon review pursuant to § 235.3(b)(5)(iv) of chapter I, an immigration judge determines that the alien was once so admitted or granted asylum, provided that such status has not been terminated by final administrative action, and the DHS initiates removal proceedings against the alien under section 240 of the Act.

(iii)–(iv) [Reserved]

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(2) *Referral by Form I-863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I-863 to an alien in the following cases:

(i) If an asylum officer determines that the alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge;

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen for whom the officer could not verify such status to an immigration judge for review of the order; or

(iii) If an immigration officer refers an applicant in accordance with the provisions of § 208.2(c)(1) or (2) of this chapter to an immigration judge for an asylum- or withholding-only hearing.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

(c) The provisions of part 235 are separate and severable from one another. In the event that any provision in part 235 is stayed, enjoined, not implemented, or otherwise held invalid, the remaining provisions shall nevertheless be implemented as an independent rule and continue in effect.

[62 FR 10358, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 74 FR 55739, Oct. 28, 2009; 85 FR 29316, May 14, 2020; 85 FR 80393, Dec. 11, 2020; 87 FR 18220, Mar. 29, 2022]

EFFECTIVE DATE NOTE: At 85 FR 84196, Dec. 23, 2020, § 235.6 was amended by revising paragraph (a)(2)(i), effective Jan. 22, 2021. The amendment to § 235.7 was delayed until Mar. 22, 2021, at 86 FR 6847, Jan. 25, 2021, further delayed until Dec. 31, 2021, at 86 FR 15076, Mar. 22, 2021, further delayed until Dec. 31, 2022, at 86 FR 73615, Dec. 28, 2021, and further delayed until Dec. 31, 2024, at 87 FR 79789, Dec. 28, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that the alien has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that it is more likely than not that the alien would be tortured in the prospective country of removal, and the alien requests a review of that determination by an immigration judge; or

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§ 235.7 Automated inspection services.

(a) *PORTPASS Program*—(1) *Definitions*—(i) *Port Passenger Accelerated Service System (PORTPASS).* A system in which certain ports-of-entry (POEs) are identified and designated by the Service as providing access to the United States for a group of identified, low-risk, border crossers. Alien participants in the PORTPASS program are personally inspected, identified, and screened in advance of approval for participation in the program by an immigration officer, and may apply to enter the United States through a dedicated commuter lane (DCL) or through an automated permit port (APP). Such advance inspection and identification, when the enrolled participant satisfies the conditions and requirements set forth in this section, satisfies the reporting requirements of § 235.1(a). Each successful use of PORTPASS constitutes a separate and completed inspection and application for entry by the alien program participants on the date PORTPASS is used. United States citizens who meet the eligibility requirements for participation are subject to all rules, procedures, and conditions for use set forth in this section.

(ii) *Automated Permit Port (APP).* A POE designated by the Service to provide access to the United States by an identified, low-risk, border crosser through the use of automation when the POE is not staffed. An APP has limited hours of operation and is located at a remote location on a land border. This program is limited to the northern border of the United States.

(iii) *Dedicated Commuter Lane (DCL).* A special lane set apart from the normal flow of traffic at a land border