

**INA Sec. 245(a)(3)**

(a) The status of an alien who was inspected and admitted or paroled into the United States 1/ or the status of any other alien having an approved petition for classification as a VAWA self-petitioner 1a/ may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

**INA Sec. 212(a)(1)(A)**

(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.-

(A) In general.-Any alien-

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

(ii) 1/ except as provided in subparagraph (C) 1a/ who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)-

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

### **INA Sec. 232(b)**

(b) Physical and Mental Examination. The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the immigration judges, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be inadmissible under paragraph (1) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under paragraph (1) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

## **Title 42: Public Health**

### **PART 34—MEDICAL EXAMINATION OF ALIENS**

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**Authority:** 42 U.S.C. 252; 8 U.S.C. 1182 and 1222.

#### **§ 34.1 Applicability.**

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The provisions of this part shall apply to the medical examination of:

- (a) Aliens applying for a visa at an embassy or consulate of the United States;
- (b) Aliens arriving in the United States;
- (c) Aliens required by the INS to have a medical examination in connection with determination of their admissibility into the United States; and
- (d) Aliens applying for adjustment status.

[56 FR 25001, May 31, 1991]

### **§ 34.2 Definitions.**

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As used in this part, terms shall have the following meanings:

- (a) *CDC*. Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services.
- (b) *Communicable disease of public health significance*. Any of the following diseases:
  - (1) Chancroid.
  - (2) Communicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. The current revised list of quarantinable communicable diseases is available at <http://www.cdc.gov> and <http://www.archives.gov/federal-register>.
  - (3) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the factors listed in §34.3(d) and for which the CDC Director has determined (A) a threat exists for importation into the United States, and (B) such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the revised International Health Regulations ( <http://www.who.int/csr/ihr/en/> ), as adopted by the Fifty-Eighth World Health Assembly in 2005, and as entered into effect in the United States in July, 2007, subject to the U.S. Government's reservation and understandings:
    - (i) Any of the communicable diseases for which a single case requires notification to the World Health Organization (WHO) as an event that may constitute a public health emergency of international concern, or
    - (ii) Any other communicable disease the occurrence of which requires notification to the WHO as an event that may constitute a public health emergency of international concern.HHS/CDC's determinations will be announced by notice in the Federal Register .
  - (4) Gonorrhea.
  - (5) Granuloma inguinale.
  - (6) Leprosy, infectious.
  - (7) Lymphogranuloma venereum.

(8) Syphilis, infectious stage.

(9) Tuberculosis, active.

(c) *Civil surgeon.* A physician, with not less than 4 years' professional experience, selected by the District Director of INS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by the INS to have a medical examination.

(d) *Class A medical notification.* Medical notification of:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(3) Drug abuse or addiction.

(e) *Class B medical notification.* Medical notification of a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(f) *Director.* The Director of the Centers for Disease Control.

(g) *Drug abuse.* The non-medical use of a substance listed in section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802) which has not necessarily resulted in physical or psychological dependence.

(h) *Drug addiction.* The non-medical use of a substance listed in section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802) which has resulted in physical or psychological dependence.

(i) *INS.* Immigration and Naturalization Service, U.S. Department of Justice.

(j) *Medical examiner.* A panel physician, civil surgeon, or other physician designated by the Director to perform medical examinations of aliens.

(k) *Medical hold document.* A document issued to the INS by a quarantine inspector of the Public Health Service at a port of entry which defers the inspection for admission until the cause of the medical hold is resolved.

(l) *Medical notification.* A document issued to a consular authority or the INS by a medical examiner, certifying the presence or absence of:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(3) Drug abuse or addiction; or

(4) Any other physical abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(m) *Medical officer.* A physician of the Public Health Service Commissioned Corps assigned by the Director to conduct physical and mental examinations of aliens.

(n) *Mental disorder.* A currently accepted psychiatric diagnosis, as defined by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, or by other authoritative sources.

(o) *Panel physician.* A physician selected by a United States embassy or consulate to conduct medical examinations of aliens applying for visas.

(p) *Physical disorder.* A currently accepted medical diagnosis, as defined by the Manual of the International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization, or by other authoritative sources.

[21 FR 9829, Dec. 12, 1956, as amended at 52 FR 32543, Aug. 28, 1987; 56 FR 25001, May 31, 1991; 73 FR 58056, Oct. 6, 2008; 74 FR 56562, Nov. 2, 2009]

### **§ 34.3 Scope of examinations.**

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(a) *General.* In performing examinations, medical examiners shall consider those matters that relate to the following:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(3) Drug abuse or addiction; and

(4) Any other physical abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(b) *Scope of all medical examinations.* (1) All medical examinations will include the following:

(i) A general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis.

(ii) A physical examination and medical history for diseases specified in §§34.2(b)(1), and 34.2(b)(4) through 34.2(b)(10).

(2) The scope of the examination shall include any laboratory or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history, for the examining physician to reach a conclusion about the presence or absence of a physical or mental abnormality, disease, or disability.

(c) *Additional medical screening and testing for examinations performed outside the United States.* (1) HHS/CDC may require additional medical screening and testing for medical examinations performed outside the United States for diseases specified in §§34.2(b)(2) and 34.2(b)(3) by applying the risk-based medical and epidemiologic factors in paragraph (d)(2) of this section.

(2) Such examinations shall be conducted in a defined population in a geographic region or area outside the United States as determined by HHS/CDC.

(3) Additional medical screening and testing shall include a medical interview, physical examination, laboratory testing, radiologic exam, or other diagnostic procedure, as determined by HHS/CDC.

(4) Additional medical screening and testing will continue until HHS/CDC determines such screening and testing is no longer warranted based on factors such as the following: Results of disease outbreak investigations and response efforts; effectiveness of containment and control measures; and the status of an applicable determination of public health emergency of international concern declared by the Director General of the WHO.

(5) HHS/CDC will directly provide medical examiners information pertaining to all applicable additional requirements for medical screening and testing, and will post these at the following Internet addresses: <http://www.cdc.gov/ncidod/dq/technica.htm> and <http://www.globalhealth.gov>.

(d) *Risk-based approach.* (1) HHS/CDC will use the medical and epidemiological factors listed in paragraph (d)(2) of this section to determine the following:

(i) Whether a disease as specified in §34.2(b)(3)(ii) is a communicable disease of public health significance.

(ii) Which diseases in §§34.2(b)(2) and (b)(3) merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening.

(2) Medical and epidemiological factors include the following:

(i) The seriousness of the disease's public health impact;

(ii) Whether the emergence of the disease was unusual or unexpected;

(iii) The risk of the spread of the disease in the United States;

(iv) The transmissibility and virulence of the disease;

(v) The impact of the disease at the geographic location of medical screening; and

(vi) Other specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States.

(e) *Persons subject to requirement for chest X-ray examination and serologic testing.* (1) As provided in paragraph (e)(2) of this section, a chest x-ray examination and serologic testing for syphilis shall be required as part of the examination of the following:

(i) Applicants for immigrant visas;

(ii) Students, exchange visitors, and other applicants for non-immigrant visas required by a U.S. consular authority to have a medical examination;

(iii) Applicants outside the United States who apply for refugee status;

(iv) Applicants in the United States who apply for adjustment of their status under the immigration statute and regulations.

(2) *Chest X-ray examination and serologic testing.* Except as provided in paragraph (e)(2)(iv) of this section, applicants described in paragraph (e)(1) of this section shall be required to have the following:

(i) For applicants 15 years of age and older, a chest x-ray examination;

(ii) For applicants under 15 years of age, a chest x-ray examination if the applicant has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period;

(iii) For applicants 15 years of age and older, serologic testing for syphilis and HIV.

(iv) *Exceptions.* Serologic testing for syphilis shall not be required if the alien is under the age of 15, unless there is reason to suspect infection with syphilis. An alien, regardless of age, in the United States, who applies for adjustment of status to lawful permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, is positive. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *M. tuberculosis* antigens, or chest x-ray examination for good cause, upon application approved by the Director.

(3) *Immune response to Mycobacterium tuberculosis antigens.* (i) All aliens 2 years of age or older in the United States who apply for adjustment of status to permanent residents, under the immigration laws and regulations, or other aliens in the United States who are required by the U.S. Department of Homeland Security to have a medical examination in connection with a determination of their admissibility, shall be required to have a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens. Exceptions to this requirement may be authorized for good cause upon application approved by the Director. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(ii) Aliens less than 2 years old shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(iii) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and, if indicated, a chest radiograph.

(iv) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and a chest radiograph, regardless of age, if they have symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period.

(4) *Additional testing requirements.* All applicants subject to the chest radiograph requirement, and for whom the radiograph shows an abnormality suggestive of tuberculosis disease, shall be required to undergo additional testing for tuberculosis.

(5) *How and where performed.* All chest x-ray images used in medical examinations performed under the regulations to this part shall be large enough to encompass the entire chest (approximately 14 x 17 inches; 35.6 x 32.2 cm).

(6) *Chest x-ray, laboratory, and treatment reports* . The chest radiograph reading and serologic test results for syphilis shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest x-ray image, the medical notification shall include at least a summary statement of findings of the earlier images, followed by a complete reading of the last image, and dates and details of any laboratory tests and treatment for tuberculosis.

(f) *Procedure for transmitting records*. For aliens issued immigrant visas, the medical notification and chest X-ray images, if any, shall be placed in a separate envelope which shall be sealed. When more than one chest X-ray image is used as a basis for the examiner's conclusions, all images shall be included.

(g) *Failure to present records*. When a determination of admissibility is to be made at the U.S. port of entry, a medical hold document shall be issued pending completion of any necessary examination procedures. A medical hold document may be issued for aliens who:

- (1) Are not in possession of a valid medical notification, if required;
- (2) Have a medical notification which is incomplete;
- (3) Have a medical notification which is not written in English;
- (4) Are suspected to have an excludable medical condition.

(h) The Secretary of Homeland Security, after consultation with the Secretary of State and the Secretary of Health and Human Services, may in emergency circumstances permit the medical examination of refugees to be completed in the United States.

(i) All medical examinations shall be carried out in accordance with such technical instructions for physicians conducting the medical examination of aliens as may be issued by the Director. Copies of such technical instructions are available upon request to the Director, Division of Global Migration and Quarantine, Mailstop E03, HHS/CDC, Atlanta GA 30333.

[73 FR 58056, Oct. 6, 2008, as amended at 73 FR 62211, Oct. 20, 2008; 74 FR 56562, Nov. 2, 2009]

#### **§ 34.4 Medical notifications.**

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(a) Medical examiners shall issue medical notifications of their findings of the presence or absence of Class A or Class B medical conditions. The presence of such condition must have been clearly established.

(b) *Class A medical notifications*. (1) The medical examiner shall report his/her findings to the consular officer or the INS by Class A medical notification which lists the specific condition for which the alien may be excluded, if an alien is found to have:

- (i) A communicable disease of public health significance;
- (ii)(A) A physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or  
  
(B) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;
- (iii) Drug abuse or addiction.



*Provided, however,* That a Class A medical notification of a physical or mental disorder, and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(c) *Class B medical notifications.* (1) If an alien is found to have a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being, the medical examiner shall report his/her findings to the consular or INS officer by Class B medical notification which lists the specific conditions found by the medical examiner. Provided, however, that a Class B medical notification shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(d) *Other medical notifications.* If as a result of the medical examination, the medical examiner does not find a Class A or Class B condition in an alien, the medical examiner shall so indicate on the medical notification form and shall report his findings to the consular or INS officer.

[56 FR 25003, May 31, 1991]

### **§ 34.5 Postponement of medical examination.**

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Whenever, upon an examination, the medical examiner is unable to determine the physical or mental condition of an alien, completion of the medical examination shall be postponed for such observation and further examination of the alien as may be reasonably necessary to determine his/her physical or mental condition. The examination shall be postponed for aliens who have an acute infectious disease until the condition is resolved. The alien shall be referred for medical care as necessary.

[56 FR 25003, May 31, 1991]

### **§ 34.6 Applicability of Foreign Quarantine Regulations.**

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Aliens arriving at a port of the United States shall be subject to the applicable provisions of 42 CFR part 71, Foreign Quarantine, with respect to examination and quarantine measures.

[56 FR 25003, May 31, 1991]

### **§ 34.7 Medical and other care; death.**

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(a) An alien detained by or in the custody of the INS may be provided medical, surgical, psychiatric, or dental care by the Public Health Service through interagency agreements under which the INS shall reimburse the Public Health Service. Aliens found to be in need of emergency care in the course of medical examination shall be treated to the extent deemed practical by the attending physician and if considered to be in need of further care, may be referred to the INS along with the physician's recommendations concerning such further care.

(b) In case of the death of an alien, the body shall be delivered to the consular or immigration authority concerned. If such death occurs in the United States, or in a territory or possession thereof, public burial shall be provided upon request of the INS and subject to its agreement to pay the burial expenses. Autopsies shall not be performed unless approved by the INS.

[56 FR 25003, May 31, 1991]

### **§ 34.8 Reexamination; convening of review boards; expert witnesses; reports.**

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(a) The Director shall convene a board of medical officers to reexamine an alien:

(1) Upon the request of the INS for a reexamination by such a board; or

(2) Upon an appeal to the INS by an alien who, having received a medical examination in connection with the determination of admissibility to the United States (including examination on arrival and adjustment of status as provided in the immigration laws and regulations) has been certified for a Class A condition.

(b) For boards convened to reexamine aliens certified as:

(1) Having a communicable disease of public health significance, the board shall consist of three medical officers, at least one of whom is experienced in the diagnosis and treatment of the communicable disease for which medical notification has been made, and the decision of the majority of the board shall prevail;

(2)(i) Having a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Being a drug abuser or addict;

(3) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of three medical officers, at least one of whom shall be a board certified psychiatrist, and the decision of the majority of the board shall prevail.

(c) Reexamination shall include:

(1) Review of all records submitted by the alien, other witnesses, or the board;

(2) Use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien's medical history;

(3) Consideration of statements regarding the alien's physical or mental condition made by a physician after his/her examination of the alien; and

(4) An independent physical or psychiatric examination of the alien performed by the board, at the board's option.

(d) An alien who is to be reexamined shall be notified of the time and place of his/her reexamination not less than 5 days prior thereto.

(e) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at least one expert medical witness. If any witnesses offered are not permitted by the board to testify, the record of the proceedings shall show the reason for the denial of permission.

(f) Witnesses before the board shall be given a reasonable opportunity to examine the medical notification and other records involved in the reexamination and to present all relevant and material evidence orally or in writing until such time as the proceedings are declared by the board to be closed. During the course of the hearing the alien's attorney or representative shall be permitted to examine the alien and he/she, or the alien, shall be permitted to examine any witnesses offered in the alien's behalf and to cross-examine any witnesses called by the board. If the alien does not have an attorney or representative, the board shall assist the alien in the presentation of his/her case to the end that all of the material and relevant facts may be considered.

(g) The findings and conclusions of the board shall be based on its medical examination of the alien, if any, and on the evidence presented and made a part of the record of its proceedings.

(h) The board shall report its findings and conclusions to the INS, and shall also give prompt notice thereof to the alien if his/her reexamination has been based on his/her appeal. The board's report to the INS shall specifically affirm, modify, or reject the findings and conclusions of prior examining medical officers.

(i) The board shall issue its medical notification in accordance with the applicable provisions of this part if it finds that an alien it has reexamined has a Class A or Class B condition.

(j) If the board finds that an alien it has reexamined does not have a Class A or Class B condition, it shall issue its medical notification in accordance with the applicable provisions of this part.

(k) After submission of its report, the board shall not be reconvened, nor shall a new board be convened, in connection with the same application for admission or for adjustment of status, except upon the express authorization of the Director.

## **Title 8: Aliens and Nationality**

### **PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM**

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#### **Section Contents**

[§ 209.1 Adjustment of status of refugees.](#)

[§ 209.2 Adjustment of status of alien granted asylum.](#)

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**Authority:** 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

#### **§ 209.1 Adjustment of status of refugees.**

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The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act whose application is based on his or her refugee status.

(a) *Eligibility.* (1) Every alien in the United States who is classified as a refugee under 8 CFR part 207, whose status has not been terminated, is required to apply to USCIS one year after entry in order for USCIS to determine his or her admissibility under section 212 of the Act, without regard to paragraphs (4), (5), and (7)(A) of section 212(a) of the Act.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980, shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Application.* Upon admission to the United States, every refugee entrant will be notified of the requirement to submit an application for permanent residence one year after entry. An application for the benefits of section 209(a) of the Act must be submitted along with the biometrics required by 8 CFR 103.16 and in accordance with the applicable form instructions.

(c) *Medical examination.* A refugee seeking adjustment of status under section 209(a) of the Act is not required to repeat the medical examination performed under §207.2(c), unless there were medical grounds of inadmissibility applicable at the time of admission. The refugee is, however, required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act.

(d) *Interview.* USCIS will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(e) *Decision.* USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request for permanent residence in removal proceedings under section 240 of the Act. If the applicant is found to be admissible for permanent residence under section 209(a) of the Act, USCIS will approve the application, admit the applicant for lawful permanent residence as of the date of the alien's arrival in the United States, and issue proof of such status.

(f) *Inadmissible Alien.* An applicant who is inadmissible to the United States as described in 8 CFR 209.1(a)(1), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by USCIS except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest. An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions.

[63 FR 30109, June 3, 1998, as amended at 76 FR 53785, Aug. 29, 2011]

## **§ 209.2 Adjustment of status of alien granted asylum.**

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The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by USCIS to that of an alien lawfully admitted for permanent residence, provided the alien:

(i) Applies for such adjustment;

(ii) Has been physically present in the United States for at least one year after having been granted asylum;

(iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;

(iv) Has not been firmly resettled in any foreign country; and

(v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section 208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by USCIS to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section.

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

[46 FR 45119, Sept. 10, 1981, as amended at 56 FR 26898, June 12, 1991; 57 FR 42883, Sept. 17, 1992; 63 FR 30109, June 3, 1998; 74 FR 55737, Oct. 28, 2009; 76 FR 53785, Aug. 29, 2011]

## Title 8: Aliens and Nationality

### PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

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#### Section Contents

[§ 245.1 Eligibility.](#)

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**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

#### § 245.1 Eligibility.

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(a) *General.* Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application. A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.

(b) *Restricted aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provisions of section 245(i) of the Act and §245.10, is not included in the categories of aliens

prohibited from applying for adjustment of status listed in §245.1(c), is eligible to receive an immigrant visa, and has an immigrant visa immediately available at the time of filing the application for adjustment of status:

- (1) Any alien who entered the United States in transit without a visa;
- (2) Any alien who, on arrival in the United States, was serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon;
- (3) Any alien who was not admitted or paroled following inspection by an immigration officer;
- (4) Any alien who, on or after January 1, 1977, was employed in the United States without authorization prior to filing an application for adjustment of status. This restriction shall not apply to an alien who is:
  - (i) An immediate relative as defined in section 201(b) of the Act;
  - (ii) A special immigrant as defined in section 101(a)(27)(H) or (J) of the Act;
  - (iii) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991; or
  - (iv) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989), and has not entered into or continued in unauthorized employment on or after November 29, 1990.
- (5) Any alien who on or after November 6, 1986 is not in lawful immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27) (H), (I), or (J).
- (6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a lawful status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27) (H), (I), or (J) of the Act;
- (7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (g), other than an immediate relative as defined in section 201(b) of the Act;
- (8) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act;
- (9) Any alien who seeks adjustment of status pursuant to an employment-based immigrant visa petition under section 203(b) of the Act and who is not maintaining a lawful nonimmigrant status at the time he or she files an application for adjustment of status; and
- (10) Any alien who was ever employed in the United States without the authorization of the Service or who has otherwise at any time violated the terms of his or her admission to the United States as a nonimmigrant, except an alien who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H), (I), (J), or (K) of the Act. For purposes of this paragraph, an alien who meets the requirements of §274a.12(c)(9) of this chapter shall not be deemed to have engaged in unauthorized employment during the pendency of his or her adjustment application.

(c) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

- (1) Any nonpreference alien who is seeking or engaging in gainful employment in the United States who is not the beneficiary of a valid individual or blanket labor certification issued by the Secretary of Labor or who is not exempt from certification requirements under §212.8(b) of this chapter;

(2) Except for an alien who is applying for residence under the provisions of section 133 of the Immigration Act of 1990, any alien who has or had the status of an exchange visitor under section 101(a)(15)(J) of the Act and who is subject to the foreign residence requirement of section 212(e) of the Act, unless the alien has complied with the foreign residence requirement or has been granted a waiver of that requirement, under that section. An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103-416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(l) of the Act and §212.7(c)(9) of this chapter have not been met;

(3) Any alien who has nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of section 101(a) of the Act, or has an occupational status which would, if the alien were seeking admission to the United States, entitle the alien to nonimmigrant status under those paragraphs, unless the alien first executes and submits the written waiver required by section 247(b) of the Act and part 247 of this chapter;

(4) Any alien who claims immediate relative status under section 201(b) or preference status under sections 203(a) or 203(b) of the Act, unless the applicant is the beneficiary of a valid unexpired visa petition filed in accordance with part 204 of this chapter;

(5) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 or 216A of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible;

(6) Any alien admitted to the United States as a nonimmigrant defined in section 101(a)(15)(K) of the Act, unless:

(i) In the case of a K-1 fiancé(e) under section 101(a)(15)(K)(i) of the Act or the K-2 child of a fiancé(e) under section 101(a)(15)(K)(iii) of the Act, the alien is applying for adjustment of status based upon the marriage of the K-1 fiancé(e) which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the K-1 fiancé(e) pursuant to §214.2(k) of this chapter;

(ii) In the case of a K-3 spouse under section 101(a)(15)(K)(ii) of the Act or the K-4 child of a spouse under section 101(a)(15)(K)(iii) of the Act, the alien is applying for adjustment of status based upon the marriage of the K-3 spouse to the United States citizen who filed a petition on behalf of the K-3 spouse pursuant to §214.2(k) of this chapter;

(7) A nonimmigrant classified pursuant to section 101(a)(15)(S) of the Act, unless the nonimmigrant is applying for adjustment of status pursuant to the request of a law enforcement authority, the provisions of section 101(a)(15)(S) of the Act, and 8 CFR 245.11;

(8) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto.

(i) *Commencement of proceedings.* The period during which the alien is in deportation, exclusion, or removal proceedings or judicial proceedings relating thereto, commences:

(A) With the issuance of the Form I-221, Order to Show Cause and Notice of Hearing prior to June 20, 1991;

(B) With the filing of a Form I-221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the Immigration Court;

(C) With the issuance of Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, prior to April 1, 1997,

(D) With the filing of a Form I-862, Notice to Appear, with the Immigration Court, or

(E) With the issuance and service of Form I-860, Notice and Order of Expedited Removal.

(ii) *Termination of proceedings.* The period during which the alien is in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto, terminates:

(A) When the alien departs from the United States while an order of exclusion, deportation, or removal is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation or removal;

(B) When the alien is found not to be inadmissible or deportable from the United States;

(C) When the Form I-122, I-221, I-860, or I-862 is canceled;

(D) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(E) When a petition for review or an action for habeas corpus is granted by a Federal court on judicial review.

(iii) *Exemptions.* This prohibition shall no longer apply if:

(A) The alien is found not to be inadmissible or deportable from the United States;

(B) Form I-122, I-221, I-860, or I-862, is canceled;

(C) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(D) A petition for review or an action for habeas corpus is granted by a Federal court on judicial review;

(E) The alien has resided outside the United States for 2 or more years following the marriage; or

(F) The alien establishes the marriage is bona fide by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

(iv) *Request for exemption.* No application or fee is required to request the exemption under section 245(e) of the Act. The request must be made in writing and submitted with the Form I-485. Application for Permanent Residence. The request must state the basis for requesting consideration for the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(v) *Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. Evidence that a visa petition based upon the same marriage was approved under the bona fide marriage exemption to section 204(g) of the Act will be considered primary evidence of eligibility for the bona fide marriage exemption provided in this part. The applicant will not be required to submit additional evidence to qualify for the bona fide marriage exemption provided in this part, unless the district director determines that such additional evidence is needed. In cases where the district director notifies the applicant that additional evidence is required, the applicant must submit documentary evidence which clearly and convincingly establishes that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. Such evidence may include:

(A) Documentation showing joint ownership of property;

(B) Lease showing joint tenancy of a common residence;



- (C) Documentation showing commingling of financial resources;
- (D) Birth certificates of children born to the applicant and his or her spouse;
- (E) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or
- (F) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(vi) *Decision.* An application for adjustment of status filed during the prohibited period shall be denied, unless the applicant establishes eligibility for an exemption from the general prohibition.

(vii) *Denials.* The denial of an application for adjustment of status because the marriage took place during the prohibited period shall be without prejudice to the consideration of a new application or a motion to reopen a previously denied application, if deportation or exclusion proceedings are terminated while the alien is in the United States. The denial shall also be without prejudice to the consideration of a new application or motion to reopen the adjustment of status application, if the applicant presents clear and convincing evidence establishing eligibility for the bona fide marriage exemption contained in this part.

(viii) *Appeals.* An application for adjustment of status to lawful permanent resident which is denied by the district director solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in this part may be appealed to the Associate Commissioner, Examinations, in accordance with 8 CFR part 103. The appeal to the Associate Commissioner, Examinations, shall be the single level of appellate review established by statute.

(d) *Definitions* —(1) *Lawful immigration status.* For purposes of section 245(c)(2) of the Act, the term “lawful immigration status” will only describe the immigration status of an individual who is:

- (i) In lawful permanent resident status;
- (ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter;
- (iii) In refugee status under section 207 of the Act, such status not having been revoked;
- (iv) In asylee status under section 208 of the Act, such status not having been revoked;
- (v) In parole status which has not expired, been revoked or terminated; or
- (vi) Eligible for the benefits of Public Law 101–238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

(2) *No fault of the applicant or for technical reasons.* The parenthetical phrase *other than through no fault of his or her own or for technical reasons* shall be limited to:

- (i) Inaction of another individual or organization designated by regulation to act on behalf of an individual and over whose actions the individual has no control, if the inaction is acknowledged by that individual or organization (as, for example, where a designated school official certified under §214.2(f) of this chapter or an exchange program sponsor under §214.2(j) of this chapter did not provide required notification to the Service of continuation of status, or did not forward a request for continuation of status to the Service); or
- (ii) A technical violation resulting from inaction of the Service (as for example, where an applicant establishes that he or she properly filed a timely request to maintain status and the Service has not yet acted on that request). An individual whose refugee or asylum status has expired through passage of time, but whose status has not been revoked, will be considered to have gone out of status for a technical reason.

(iii) A technical violation caused by the physical inability of the applicant to request an extension of nonimmigrant stay from the Service either in person or by mail (as, for example, an individual who is hospitalized with an illness at the time nonimmigrant stay expires). The explanation of such a technical violation shall be accompanied by a letter explaining the circumstances from the hospital or attending physician.

(iv) A technical violation resulting from the Service's application of the maximum five/six year period of stay for certain H-1 nurses only if the applicant was subsequently reinstated to H-1 status in accordance with the terms of Public Law 101-656 (Immigration Amendments of 1988).

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a lawful immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

(e) *Special categories* —(1) *Alien medical graduates.* Any alien who is a medical graduate qualified for special immigrant classification under section 101(a)(27)(H) of the Act and is the beneficiary of an approved petition as required under section 204(a)(1)(E)(i) of the Act is eligible for adjustment of status. An accompanying spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States for 30 days or less, during which the applicant was practicing or studying medicine, do not interrupt the continuous presence requirement. Temporary absences authorized under the Service's advance parole procedures will not be considered interruptive of continuous presence when the alien applies for adjustment of status.

(2) [Reserved]

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) nor the exclusion provisions of sections 212(a)(4), (5)(A), or (7)(A) of the Act shall apply to a qualified special immigrant under section 101(a)(27)(J) of the Act. The exclusion provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other exclusion provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination.

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States. No fee is required for filing an application to overcome the grounds of inadmissibility of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

(g) *Availability of immigrant visas under section 245 and priority dates* —(1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference alien, the current Department of State Bureau of Consular Affairs Visa Bulletin will be consulted to determine whether an immigrant visa is immediately available. A preference immigrant visa is considered available for accepting and processing if the applicant has a priority date on the waiting list which is earlier than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current). Information concerning the immediate availability of an immigrant visa may be obtained at any Service office.

(2) *Priority dates.* The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the preference classes specified in section 203(a) or 203(b) of the Act by virtue of a valid visa petition approved in his or her behalf shall be fixed by the date on which such approved petition was filed.

(h) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act), an alien son or daughter (as defined in section 216(g)(2) of the Act), an alien entrepreneur (as defined in section 216A(f)(1) of the Act), or an alien spouse or child (as defined in section 216A(f)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to the provisions of section 216 or 216A of the Act, as appropriate.

(i) *Adjustment of status from K-3/K-4 status.* An alien admitted to the United States as a K-3 under section 101(a)(15)(K)(ii) of the Act may apply for adjustment of status to that of a permanent resident pursuant to section 245 of the Act at any time following the approval of the Form I-130 petition filed on the alien's behalf, by the same citizen who petitioned for the alien's K-3 status. An alien admitted to the United States as a K-4 under section 101(a)(15)(K)(iii) of the Act may apply for adjustment of status to that of permanent residence pursuant to section 245 of the Act at any time following the approval of the Form I-130 petition filed on the alien's behalf, by the same citizen who petitioned for the alien's parent's K-3 status. Upon approval of the application, the director shall record his or her lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act. An alien admitted to the U.S. as a K-3/K-4 alien may not adjust to that of permanent resident status in any way other than as a spouse or child of the U.S. citizen who originally filed the petition for that alien's K-3/K-4 status.

(Title I of Pub. L. 95-145 enacted Oct. 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255))

[30 FR 14778, Nov. 30, 1965]

**Editorial Note:** For Federal Register citations affecting §245.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

## Title 8: Aliens and Nationality

### PART 232—DETENTION OF ALIENS FOR PHYSICAL AND MENTAL EXAMINATION

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#### Section Contents

[§ 232.1 General.](#)

[§ 232.2 Examination in the United States of alien applicants for benefits under the immigration laws and other aliens.](#)

[§ 232.3 Arriving aliens.](#)

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**Authority:** 8 U.S.C. 1103, 1222, 1224, 1252; 8 CFR part 2.

#### § 232.1 General.

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The manner in which the physical and mental examination of aliens shall be conducted is set forth in 42 CFR part 34.

[38 FR 33061, Nov. 30, 1973, as amended at 38 FR 34315, Dec. 13, 1973. Redesignated at 62 FR 10353, Mar. 6, 1997]

## § 232.2 Examination in the United States of alien applicants for benefits under the immigration laws and other aliens.

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(a) *General.* When a medical examination is required of an alien who files an application for status as a permanent resident under section 245 of the Act or part 245 of this chapter, it shall be made by a selected civil surgeon. Such examination shall be performed in accordance with 42 CFR part 34 and any additional instructions and guidelines as may be considered necessary by the U.S. Public Health Service. In any other case in which the Service requests a medical examination of an alien, the examination shall be made by a medical officer of the U.S. Public Health Service, or by a civil surgeon if a medical officer of the U.S. Public Health Service is not located within a reasonable distance or is otherwise not available.

(b) *Selection of civil surgeons.* When a civil surgeon is to perform the examination, he shall be selected by the district director having jurisdiction over the area of the alien's residence. The district director shall select as many civil surgeons, including clinics and local, county and state health departments employing qualified civil surgeons, as he determines to be necessary to serve the needs of the Service in a locality under his jurisdiction. Each civil surgeon selected shall be a licensed physician with no less than 4 years' professional experience. Under usual circumstances physicians will be required to meet the 4 year professional experience criteria. However, at the district director's discretion other physicians with less experience can be designated to address unusual or unforeseen situations as the need arises. Officers of local health departments and medical societies may be consulted to obtain the names of competent surgeons and clinics willing to make the examinations. An understanding shall be reached with respect to the fee which the surgeon or clinic will charge for the examination. The alien shall pay the fee agreed upon directly to the surgeon making the examination.

(c) *Civil surgeon reports* —(1) *Applicants for status of permanent resident.* (i) When an applicant for status as a permanent resident is found upon examination to be free of any defect, disease, or disability listed in section 212(a) of the Act, the civil surgeon shall endorse Form I-486A, Medical Examination and Immigration Interview, and forward it with the X-ray and other pertinent laboratory reports to the immigration office from which the alien was referred. The immigration office may return the X-ray and laboratory reports to the alien. If the applicant is found to be afflicted with a defect, disease or disability listed under section 212(a) of the Act, the civil surgeon shall complete Form OF-157 in duplicate, and forward it with Form I-486A, X-ray, and other pertinent laboratory reports to the immigration office from which the alien was referred.

(ii) If the applicant is found to be afflicted with active tuberculosis and a waiver is granted under section 212(g) of the Act, the immigration office will forward a copy of the completed Form I-601 (Application for Waiver of Grounds of Excludability) and a copy of the Form OF-157 to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333.

(iii) If an alien who is found to be mentally retarded or to have had one or more previous attacks of insanity, applies for a waiver of excludability under section 212(g) of the Act, the immigration office will submit to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, the completed Form I-601, including a copy of the medical report specified in the instructions attached to that form, and a copy of Form OF-157. This official shall review the medical report and advise the Service whether it is acceptable, in accordance with §212.7(b)(4)(ii) of this chapter.

(iv) In any other case where the applicant has been found to be afflicted with active or inactive tuberculosis or an infectious or noninfectious leprosy condition, the immigration office will forward a copy of Form OF-157 with the applicant's address endorsed on the reverse to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333.

(2) *Other aliens.* The results of the examination of an alien who is not an applicant for status as a permanent resident shall be entered on Form I-141, Medical Certificate, in duplicate. This form shall be returned to the Service office by which the alien was referred.

(d) *U.S. Public Health Service hospital and outpatient clinic reports.* When an applicant for a benefit under the immigration laws, other than an applicant for status as a permanent resident, is examined by a medical officer of the U.S. Public Health Service, the results of the examination shall be entered on Form I-141, Medical Certificate, in duplicate. The form shall be returned to the Service office by which the alien was referred.

[38 FR 33061, Nov. 30, 1973, as amended at 48 FR 30610, July 5, 1983; 52 FR 16194, May 1, 1987. Redesignated at 62 FR 10353, Mar. 6, 1997]

### **§ 232.3 Arriving aliens.**

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When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he or she shall, after consultation with the United States Public Health Service at the port-of-entry, notify the master or agent of the arriving vessel or aircraft of his or her intention to effect such detention by serving on the master or agent Form I-259 in accordance with §235.3(a) of this chapter.

[62 FR 10353, Mar. 6, 1997]