

America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and section 301 of title 3, United States Code, and to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

**SECTION 1. Functions of the Secretary of Homeland Security.** The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

**SEC. 2. Functions of the Secretary of State.** The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

**SEC. 3. Judicial Review.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

## § 1186. Transferred

### CODIFICATION

Section, act June 27, 1952, ch. 477, title II, ch. 2, §216, as added Nov. 6, 1986, Pub. L. 99-603, title III, §301(c), 100 Stat. 3411, which related to admission of temporary H-2A workers, was renumbered §218 by Pub. L. 100-525, §2(l)(2), Oct. 24, 1988, 102 Stat. 2612, and transferred to section 1188 of this title.

### § 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

#### (a) In general

##### (1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (h)(1)) and an alien son or daughter (as defined in subsection (h)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

##### (2) Notice of requirements

###### (A) At time of obtaining permanent residence

At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

###### (B) At time of required petition

In addition, the Secretary of Homeland Security shall attempt to provide notice to

such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections<sup>1</sup> (c)(1).

#### (C) Effect of failure to provide notice

The failure of the Secretary of Homeland Security to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

#### (b) Termination of status if finding that qualifying marriage improper

##### (1) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Secretary of Homeland Security determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

(i) was entered into for the purpose of procuring an alien's admission as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien;

the Secretary of Homeland Security shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

##### (2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

#### (c) Requirements of timely petition and interview for removal of condition

##### (1) In general

In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Secretary of Homeland Security, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of

<sup>1</sup> So in original. Probably should be "subsection".

the Department of Homeland Security respecting the facts and information described in subsection (d)(1).

**(2) Termination of permanent resident status for failure to file petition or have personal interview**

**(A) In general**

In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

- (i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or
- (ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Secretary of Homeland Security shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

**(B) Hearing in removal proceeding**

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

**(3) Determination after petition and interview**

**(A) In general**

If—

- (i) a petition is filed in accordance with the provisions of paragraph (1)(A), and
- (ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Secretary of Homeland Security shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

**(B) Removal of conditional basis if favorable determination**

If the Secretary of Homeland Security determines that such facts and information are true, the Secretary of Homeland Security shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

**(C) Termination if adverse determination**

If the Secretary of Homeland Security determines that such facts and information are not true, the Secretary of Homeland Security shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

**(D) Hearing in removal proceeding**

Any alien whose permanent resident status is terminated under subparagraph (C)

may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

**(4) Hardship waiver**

The Secretary of Homeland Security, in the Attorney General's<sup>2</sup> discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

- (A) extreme hardship would result if such alien is removed,
- (B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), or
- (C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Secretary of Homeland Security shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary of Homeland Security. The Secretary of Homeland Security shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

**(d) Details of petition and interview**

**(1) Contents of petition**

Each petition under subsection (c)(1)(A) shall contain the following facts and information:

**(A) Statement of proper marriage and petitioning process**

The facts are that—

- (i) the qualifying marriage—
  - (I) was entered into in accordance with the laws of the place where the marriage took place,
  - (II) has not been judicially annulled or terminated, other than through the death of a spouse, and
  - (III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

<sup>2</sup>So in original. Probably should be "Secretary's".

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)<sup>3</sup> of section 1184 of this title with respect to the alien spouse or alien son or daughter.

**(B) Statement of additional information**

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a), and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

**(2) Period for filing petition**

**(A) 90-day period before second anniversary**

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

**(B) Date petitions for good cause**

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Secretary of Homeland Security good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

**(C) Filing of petitions during removal**

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Secretary of Homeland Security may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

**(3) Personal interview**

The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Department of Homeland Security, designated by the Secretary of Homeland Security, which is convenient to the parties involved. The Secretary of Homeland Security, in the Secretary's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

**(e) Treatment of period for purposes of naturalization**

For purposes of subchapter III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

**(f) Treatment of certain waivers**

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

**(g) Service in Armed Forces**

**(1) Filing petition**

The 90-day period described in subsection (d)(2)(A) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that, at the option of the petitioners, the petition may be filed during such active-duty service at any time after the commencement of such 90-day period.

**(2) Personal interview**

The 90-day period described in the first sentence of subsection (d)(3) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that nothing in this paragraph shall be construed to prohibit the Secretary of Homeland Security from waiving the requirement for an interview under subsection (c)(1)(B) pursuant to the Secretary's authority under the second sentence of subsection (d)(3).

**(h) Definitions**

In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancée or fiancé of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term "alien son or daughter" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term "qualifying marriage" means the marriage described to in paragraph (1).

(4) The term "petitioning spouse" means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, §216, as added Pub. L. 99-639, §2(a), Nov. 10, 1986, 100

<sup>3</sup> See References in Text note below.

Stat. 3537; amended Pub. L. 100-525, §7(a), Oct. 24, 1988, 102 Stat. 2616; Pub. L. 101-649, title VII, §701(a), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102-232, title III, §302(e)(8)(B), Dec. 12, 1991, 105 Stat. 1746; Pub. L. 103-322, title IV, §40702(a), Sept. 13, 1994, 108 Stat. 1955; Pub. L. 104-208, div. C, title III, §308(d)(4)(E), (e)(7), (f)(1)(I), (J), Sept. 30, 1996, 110 Stat. 3009-618, 3009-620, 3009-621; Pub. L. 106-553, §1(a)(2) [title XI, §1103(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A-145; Pub. L. 112-58, §1, Nov. 23, 2011, 125 Stat. 747.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Subsection (p) of section 1184 of this title, referred to in subsec. (d)(1)(A)(ii), was redesignated subsec. (r) of section 1184 by Pub. L. 108-193, §8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

## CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

## AMENDMENTS

2011—Pub. L. 112-58, §1(b)(2)(B), substituted “Secretary of Homeland Security” for “Attorney General” wherever appearing except in subsec. (g)(2).

Subsec. (a)(1). Pub. L. 112-58, §1(b)(1), substituted “(h)(1)” for “(g)(1)” and “(h)(2)” for “(g)(2)”.

Subsec. (c)(1)(B). Pub. L. 112-58, §1(b)(2)(C), substituted “Department of Homeland Security” for “Service”.

Subsec. (d)(3). Pub. L. 112-58, §1(b)(2)(A), (C), substituted “Department of Homeland Security” for “Service” and “Secretary’s” for “Attorney General’s”.

Subsecs. (g), (h). Pub. L. 112-58, §1(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2000—Subsecs. (b)(1)(B), (d)(1)(A)(ii). Pub. L. 106-553 substituted “section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title” for “section 1154(a) or 1184(d) of this title”.

1996—Subsec. (b)(1)(A)(i). Pub. L. 104-208, §308(f)(1)(I), substituted “admission” for “entry”.

Subsec. (b)(2). Pub. L. 104-208, §308(e)(7), substituted “removal” for “deportation” in heading and “remove” for “deport” in text.

Subsec. (c)(2)(B). Pub. L. 104-208, §308(e)(7), substituted “removal” for “deportation” in heading and text.

Subsec. (c)(3)(D). Pub. L. 104-208, §308(e)(7), substituted “removal” for “deportation” in heading and “remove” for “deport” in text.

Subsec. (c)(4)(A). Pub. L. 104-208, §308(e)(7), substituted “removed” for “deported”.

Subsec. (d)(1)(A)(i)(III). Pub. L. 104-208, §308(f)(1)(J), substituted “admission” for “entry”.

Subsec. (d)(2)(C). Pub. L. 104-208, §308(e)(7), substituted “removal” for “deportation” wherever appearing in heading and text.

Subsec. (f). Pub. L. 104-208, §308(d)(4)(E), substituted “inadmissibility” for “exclusion”.

1994—Subsec. (c)(4). Pub. L. 103-322 inserted after second sentence “In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.”

1991—Subsec. (g)(1). Pub. L. 102-232 substituted “section 1153(d)” for “section 1153(a)(8)” in closing provisions.

1990—Subsec. (c)(4). Pub. L. 101-649 struck out “or” at end of subpar. (A), struck out “by the alien spouse for good cause” after “death of the spouse” and substituted “, or” for period at end of subpar. (B), added subpar. (C), and inserted at end “The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.”

1988—Pub. L. 100-525, §7(a)(1), made technical amendment to directory language of Pub. L. 99-639, §2(a), which enacted this section.

Subsec. (c)(3)(A). Pub. L. 100-525, §7(a)(2), substituted “90 days” for “90-days”.

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, §1103(d)] of Pub. L. 106-553, set out as a note under section 1101 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-322, title IV, §40702(b), Sept. 13, 1994, 108 Stat. 1955, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994] and shall apply to applications made before, on, or after such date.”

## EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-232, title III, §302(e)(8), Dec. 12, 1991, 105 Stat. 1746, provided that the amendment made by section 302(e)(8) is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101-649.

## EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-649, title VII, §701(b), Nov. 29, 1990, 104 Stat. 5086, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639, see section 7(d) of Pub. L. 100-525, set out as a note under section 1182 of this title.

## ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

### § 1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

#### (a) In general

##### (1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien law-