

§ 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(7)(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 subsections¹ (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 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).

¹ So in original. Probably should be "subsection".