

than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, not valid for certification of citizenship for any purpose other than admission into the United States from Canada or Mexico, and issued by such State to an individual, may permit the individual to use the driver's license to meet the documentation requirements under subparagraph (A) for entry into the United States from Canada or Mexico at land and sea ports of entry.

“(C) REPORT.—Not later than 180 days after the initiation of the pilot program described in subparagraph (B)(viii), the Secretary of Homeland Security and the Secretary of State shall submit to the appropriate congressional committees a report which includes—

“(i) an analysis of the impact of the pilot program on national security;

“(ii) recommendations on how to expand the pilot program to other States;

“(iii) any appropriate statutory changes to facilitate the expansion of the pilot program to additional States and to citizens of Canada;

“(iv) a plan to screen individuals participating in the pilot program against United States terrorist watch lists; and

“(v) a recommendation for the type of machine-readable technology that should be used in enhanced driver's licenses, based on individual privacy considerations and the costs and feasibility of incorporating any new technology into existing driver's licenses.

“(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)], to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

“(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

“(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)] to waive documentary requirements for travel into the United States; and

“(2) the President may not exercise discretion under section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except—

“(A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship;

“(B) in the case of an unforeseen emergency in individual cases; or

“(C) in the case of humanitarian or national interest reasons in individual cases.

“(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act [8 U.S.C. 1182(d)(4)(C)] until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.”

[Amendment by Pub. L. 110-161, §545, to section 7209 of Pub. L. 108-458, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

### Executive Documents

EX. ORD. NO. 12172. DELEGATION OF AUTHORITY OF PRESIDENT TO SECRETARY OF STATE AND ATTORNEY GENERAL RESPECTING ENTRY OF IRANIAN ALIENS INTO THE UNITED STATES

Ex. Ord. No. 12172, Nov. 26, 1979, 44 F.R. 67947, as amended by Ex. Ord. No. 12206, Apr. 7, 1980, 45 F.R. 24101, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1-101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

Section 1-102. Effective Date. This order is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 13323. ASSIGNMENT OF FUNCTIONS RELATING TO ARRIVALS IN AND DEPARTURES FROM THE UNITED STATES

Ex. Ord. No. 13323, Dec. 30, 2003, 69 F.R. 241, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of 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

#### Editorial Notes

##### 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 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),

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