

recordkeeping requirements, Surety bonds.

**8 CFR Part 242**

Administrative practice and procedure, Aliens, Crime.

**8 CFR Part 264**

Aliens, Reporting and recordkeeping requirements.

**8 CFR Part 274a**

Administrative practice and procedure, Aliens, Employment penalties, Report and recordkeeping requirements.

**8 CFR Part 299**

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103, 242, 264, 274a and 299 which was published at 57 FR 6457-6462 on February 25, 1992, is adopted as a final rule with the following changes:

**PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL**

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

2. In § 242.5, paragraph (a) is amended by:

- a. Removing "or" before paragraph (a)(2)(viii);
- b. Removing the "." at the end of the paragraph and replacing it with a "; or";
- c. Adding paragraph (a)(2)(ix); and
- d. Revising paragraph (a)(3) to read as follows:

**§ 242.5 Voluntary departure prior to commencement of hearing.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ix) who is the child of a legalized alien currently residing in the United States, born during an authorized absence from the United States of the mother who is:

- (A) A legalized alien; or
- (B) An alien currently residing in the United States under voluntary departure pursuant to the Family Unity Program.

(3) *Periods of time/employment.* (i) Except for paragraphs (a)(2) (v) through (ix) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances, as determined on a case-

by-case basis. Upon failure to depart, deportation proceedings will be initiated. As an exception to the 30-day voluntary departure period, an eligible alien under:

(A) Paragraph (a)(2)(v) of this section may be granted voluntary departure in increments of 1 year conditioned upon the F-1 or J-1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange program within the limitations imposed by 22 CFR 514.23; or

(B) Paragraphs (a)(2)(vi) (A), (B), and (C) of this section may be granted voluntary departure until the American Consul issues an immigrant visa and, at the discretion of the district director, issuance may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa; or

(C) Paragraphs (a)(2)(vi) (D) and (E) of this section may be granted voluntary departure, conditioned upon the continued validity of the approved third- or sixth-preference petition, as appropriate, and the alien's retention of the status established in the petition for an indefinite period until an immigrant visa is available; or

(D) Paragraphs (a)(2) (vii) and (viii) of this section may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case; or

(E) Paragraph (a)(2)(ix) of this section may be granted voluntary departure in increments of time, not to exceed 2 years.

(ii) An alien eligible for voluntary departure in paragraphs (a)(2) (v) through (viii) of this section may apply for employment authorization under the appropriate citation in § 274a.12 of this chapter.

\* \* \* \* \*

3. Section 242.6 is revised to read as follows:

**§ 242.6 Family Unity Program.**

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in Title 8 of the Code of Federal Regulations shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

*Eligible immigrant* means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

*Legalized alien* means an alien who:

(i) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(ii) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(ii) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse of unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); *provided that* an alien