8 CFR Part 212

[INS No. 1410-91]

Consent to Reapply for Admission After Deportation, Removal or Departure at Government Expense

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 514 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, by extending from ten to twenty years the bar on re-entry into the United States after deportation or removal of aliens who are convicted of one or more aggravated felonies. This change applies to admissions occurring on or after January 1, 1991, and is necessary to ensure implementation and regulatory compliance with the statute as enacted by Congress. This rule also provides other miscellaneous technical changes to 8 CFR 212.2.

DATES: This interim rule is effective May 21, 1991. Interested persons are invited to submit written comments on or before June 20, 1991.

ADDRESSES: Written comments should be submitted in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1410-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Cindy N. Lechner, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: On November 29, 1990, section 212(a)(17) of the Immigration and Nationality Act (Act) was amended to bar the re-entry of an alien convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, within twenty (20) years of the date of deportation or removal. Such alien may not re-enter the United States until twenty (20) years have elapsed unless special permission to reapply for admission during the twenty (20) year period is granted by the Attorney General. This extended period barring aggravated felons relates to aliens who are applying for admission on or after January 1, 1991.

The Service's implementation of this rule as an interim rule, with provision of for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule is that this amendment with respect to consent to reapply for admission after deportation, removal or departure at government expense, and the extension of the bar from ten to twenty years for aggravated felons is effective on January 1, 1991, under Public Law 101-649.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers of these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; and 8 CFR part 2.

2. Section 212.2 is revised to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. If the alien has been convicted of an aggravated felony, he or she must remain outside of the United States for twenty consecutive years from the deportation date before he or she is eligible to re-enter the United States. Any alien who has been deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. The examining consular or immigration officer must be satisfied that since the alien's deportation or removal, the alien has remained outside the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act. Any alien who does not satisfactorily present proof of absence from the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony, to the consular or immigration officer, and any alien who is seeking to enter the United States prior to the completion of the requisite five- or twenty-year absence, must apply for permission to reapply for admission to the United States as provided under this part. A temporary stay in the United States under section 212(d)(3) of the Act does not interrupt the five or twenty consecutive year absence requirement.

(b) *Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card.* (1) An alien who is applying to a consular officer for a nonimmigrant visa or a nonresident alien border crossing card, must request permission to reapply for admission to the United States if five years, or twenty years if the alien's deportation was based upon a conviction for an aggravated felony, have not elapsed since the date of deportation or removal. This permission shall be requested in the manner prescribed through the consular officer, and may be granted only in accordance with sections 212(a)(17) and 212(d)(3)(A) of the Act and § 212.4 of this part. However, the alien may apply for such permission by submitting Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, to the consular officer if that officer is willing to accept the application, and recommends to the district director that the alien be permitted to apply.

(2) The consular officer shall forward the Form I-212 to the district director with jurisdiction over the place where the deportation or removal proceedings were held.

(c) *Special provisions for an applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act.* (1) An applicant for a nonimmigrant visa under section 101(a)(15)(K) must:

(i) Be the beneficiary of a valid visa petition approved by the Service; and

(ii) File an application on Form I–212 with the consular officer for permission to reapply for admission to the United States after deportation or removal.

(2) The consular officer must forward the Form I–212 to the Service office with jurisdiction over the area within which the consular officer is located. If the alien is ineligible on grounds which, upon the applicant's marriage to the United States citizen petitioner, may be waived under section 212 (g), (h), or (i) of the Act, the consular officer must also forward a recommendation as to whether the waiver should be granted.

(d) *Applicant for immigrant visa.* An applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I–212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I–601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I–212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

(e) *Applicant for adjustment of status.* An applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing an application for permission to reapply, Form I–212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the Form I–212 to the immigration judge for adjudication.

(f) *Applicant for admission at port of entry.* Within five years of the deportation or removal, or twenty years in the case of an alien convicted of an aggravated felony, an alien may request permission at a port of entry to reapply for admission to the United States. The alien shall file the Form I–212 with the district director having jurisdiction over the port of entry.

(g) *Other applicants.* (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must file Form I–212. This form is filed with either:

(i) The district director having jurisdiction over the place where the deportation or removal proceedings were held; or

(ii) The district director who exercised or is exercising jurisdiction over the applicant's most recent proceeding.

(2) If the applicant is physically present in the United States but is ineligible to apply for adjustment of status, he or she must file the application with the district director having jurisdiction over his or her place of residence.

(h) *Decision.* An applicant who has submitted a request for consent to reapply for admission after deportation or removal must be notified of the decision. If the application is denied, the applicant must be notified of the reasons for the denial and of his or her right to appeal as provided in part 103 of this chapter. Except in the case of an applicant seeking to be granted advance permission to reapply for admission prior to his or her departure from the United States, the denial of the application shall be without prejudice to the renewal of the application in the course of proceedings before an immigration judge under section 242 of the Act and this chapter.

(i) *Retroactive approval.* (1) If the alien filed Form I–212 when seeking admission at a port of entry, the approval of the Form I–212 shall be retroactive to either:

(i) The date on which the alien embarked or reembarked at a place outside the United States; or

(ii) The date on which the alien attempted to be admitted from foreign contiguous territory.

(2) If the alien filed Form I–212 in conjunction with an application for adjustment of status under section 245 of the Act, the approval of Form I–212 shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States.

(j) *Advance approval.* An alien whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a) (16) or (17) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

Dated: March 11, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–12020 Filed 5–20–91; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 237

[INS No. 1416–91]

Imposition of Penalty

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule removes 8 CFR 237.4 which references 8 CFR part 280 of the Code of Federal Regulations regarding the imposition of penalties and bond procedures of section 237 of the Immigration and Nationality Act (Act). The reference will be properly placed in the Immigration and Naturalization Service (Service) Operations Instructions (O.I.) 237.1. Part 237.4 is removed and reserved.

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I St. NW., room 2108, Washington, DC 20536, telephone (202) 514–9612.

SUPPLEMENTARY INFORMATION: Title 8, Code of Federal Regulations, part 237.4 states that penalties for violation of section 237 of the Act shall be imposed in accordance with the provisions of part 280 of the regulations. A bond or undertaking submitted to obtain clearance as provided in section 237(b) of the Act shall be on Form I–310. Prior to the enactment of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, 104 Stat. 4978, section 237 of the Act required any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft who violated the provisions of section 237 of the Act to pay to the District Director of Customs a fine of $300.00 for each violation. Section 543 of the IMMACT 90 increased this fine to $2,000.00 and authorized the Commissioner of the Immigration and Naturalization Service to collect this fine.

The Service is removing the reference to the procedure for imposition of penalties and for obtaining a clearance bond from 8 CFR 237.4, and properly placing the reference into Service Operations Instructions (O.I.) 237.1. This action will bring this section into conformity with similar sections that do not contain a reference in the Service Regulations about the imposition of penalties. Therefore, 8 CFR 237.4 is removed and reserved.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the