23.7 Registration of Lawful Permanent Residence under Section 249 of the Act.

(a) General Background .

Registry is a provision of immigration law that enables certain unauthorized aliens in the U.S. to acquire lawful permanent resident status. It grants USCIS the discretionary authority to create a record of lawful admission for permanent residence for an alien who lacks such a record, has continuously resided in the U.S. since before January 1,1972, and meets other specified requirements.

The registry provision of the Act originated in a 1929 immigration law (Act of March 2, 1929), which required the alien to show that he or she “entered the United States prior to June 3, 1921; has continuously resided in the United States since entry; is a person of good moral character; and is not subject to deportation.” The law further stated that for purposes of U.S. immigration and naturalization laws, an alien for whom a registry record has been made shall be considered to have been lawfully admitted for permanent residence as of the entry date.

The registry provision has been reviewed and amended periodically since 1929, most commonly to advance the required date from which continuous residence must be shown:

- The Nationality Act of 1940 codified U.S. nationality laws, including the registry provision and advanced the registry date to July 1, 1924.

- When U.S. immigration and nationality laws were recodified and revised with the enactment of the Act of 1952, a rephrased registry provision became §249. The registry date remained July 1, 1924.

- The registry requirements underwent significant change in 1958. A law enacted that year advanced the registry date to June 28, 1940. It also eliminated the requirement that an alien applying for registry not be subject to deportation. Instead, it required that the alien not be inadmissible under section 212(a) of the Act "insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens." By eliminating deportability as a bar to regi stry, the registry mechanism became available to aliens who had entered the country illegally or who had overstayed, or violated the terms of, a temporary period of entry.

- With enactment of a 1965 law to amend the INA, the registry date was changed to June 30, 1948.

· The Immigration Reform and Control Act of 1986 advanced the registry date to January 1, 1972, where it stands today.

· Laws enacted in 1988, 1990, and 1996 restricted the availability of registry. The Immigration Technical Corrections Act of 1988 added the requirement that applicants for registry not be inadmissible as participants in Nazi persecution or genocide. The Immigration Act of 1990 made registry and the other specified forms of relief unavailable for five years to aliens who, despite proper notice, failed to appear for deportation, for asylum hearings, or for certain other immigration proceedings. The Illegal Immi gration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) expanded IMMACT90's five year bar on relief to ten years and also precluded from registry applicants who were deportable under section 237(a)(4)(B) of the Act (engagement in terrorist activities).

(b) Registry Provision .

The current registry provision in **section 249** of the Act and 8 CFR 249 permits USCIS to make a record of lawful admission for permanent residence for an alien, if no such record is available and the alien meets the eligibility requirements specified in section 249 (see paragraph (e)).

Note

Although entry as an exchange visitor who is subject to the two year foreign residency requirement is not listed in section 249 as a basis of ineligibility for registry, the provisions of section 212(e) of the Act preclude any such alien from even applying for permanent residence. Therefore, an alien who is subject to the two year foreign residency requirement of section 212(e) would not be eligible for registry under section 249, unless a waiver is granted.

Registry is a form of relief granted at the discretion of USCIS . As such, applicants meeting its statutory requirements are not *automatically entitled* to relief. If an alien's application for registry is approved, a record is made showing that the alien was lawfully admitted for permanent residence. For aliens whose entry occurred prior to July1, 1924, lawful permanent residence is granted as of their (claimed) date of entry. For others, the grant of permanent residence is as of the application approval date.

(c) Form and Jurisdiction .

An application for the recording of admission under section 249 of the Act must be filed on Form I-485 with the district director having jurisdiction over the alien's place of residence in the U.S. unless the alien has been served with an order to show cause or warrant of arrest. If the applicant has been served with a notice to appear (or before 1997, an order to show cause) or warrant of arrest, the immigration judge has jurisdiction over the application.

When the district director has jurisdiction, you, the adjudicator, will process the case to completion. When the immigration judge has jurisdiction, the preliminary processing will be done by Adjudications; however, the immigration judge will conduct the interview and render the decision; then, if the case is granted by the judge, Adjudications will perform the closing action.

An applicant for registration under section 249 of the Act must establish that he or she "is not inadmissible under section 212(a) as it relates to criminals [subsection 212(a)(2)(A), (B) or (E)], procurers and other immoral persons [subsection 212(a)(2)(D)], subversives [subsection 212(a)(3)], violators of narcotics laws [subsection 212(a)(2)(C)], or smugglers of aliens [subsections 212(a)(2)(H) and 212(a)(6)(E)]." He or she must also establish that he or she is not ineligible to citizenship [subsection 21 2(a)(8)(B)]. Other paragraphs of section 212(a) do not relate to section 249 cases. Consequently, an applicant need not submit a medical examination or an affidavit of support since inadmissibility under these grounds need not be overcome. Also, the applicant may apply for a waiver of inadmissibility under section 212(h) of the Act, if eligible, to waive those provisions of 212(a) which relate to criminals, procurers, and in some instances narcotics violators.

Also, the requirements of section 212(e) must be met by any applicant who applies for the benefits of section 249 who was either admitted in, or changed to, a J nonimmigrant status. Any applicant who is subject to the foreign residency requirement must be eligible for and obtain a waiver of the two-year foreign residence requirement since compliance with the requirement would break the applicant's continuous residence after entry prior to January 1, 1972.

(d) The Relevance of the July 1, 1924 and January 1, 1972 Dates .

Although an alien who entered the U.S. prior to January 1, 1972, may be eligible to establish that the benefits of section 249 are merited, some aliens may try to establish eligibility through entry prior to July 1, 1924. The difference in benefits derived from the two dates is substantial. An alien who can establish eligibility through entry prior to July 1, 1924, is accorded permanent resident status as of the date of entry into the U.S. An alien who establishes eligibility after July 1, 1924, and before January 1,1972, is accorded permanent resident status as of the date of approval of the application. Since many section 249 applicants also wish to become naturalized citizens of the U.S., the importance of the two dates is apparent.

Note

Under rare circumstances, an alien who can establish entry after 1924 under specific circumstances may be entitled to presumption of lawful admission under 8 CFR 101.1. See **Chapter 23.3(a)** .

(e) Eligibility Issues .

An alien may apply for, and at the discretion of USCIS, be granted, the benefits of section 249 of the Act if he or she:

- entered the U.S. prior to January 1, 1972;
- has had residence in this country continuously since such entry;
- is a person of good moral character;

- is not ineligible to citizenship;

- is not inadmissible as under one of the grounds of inadmissibility specified in section 249;

- is not deportable under section 237(a)(4)(B) of the Act as a terrorist; and

- is not subject to the foreign residence requirement of section 212(e) of the Act (see the note in paragraph (b) above).

While most registry cases are fairly straightforward and the applicant is able to meet all the eligibility criteria, each of these criteria merits some reflection and discussion:

- Entry , in general, pertains to any type of entry, whether legal or illegal, and (if legal) to entry in any immigrant, nonimmigrant, or parole classification (but see paragraph (b) regarding J nonimmigrants).

- Establishing Entry Prior to January 1, 1972, or Prior to July 1, 1924 . Evidence of entry is shown by submission of at least one document showing presence in the U.S. prior to that date. Whether the applicant is able to establish that the entry occurred prior to January 1, 1972, or prior to July 1, 1924, is significant because while the former entitles the (otherwise-eligible) applicant to lawful permanent resident status commencing on the date the application is approved, the latter gives him or her residence as of the date he or she claims to have first entered. This has a bearing on whether the person is eligible for additional benefits under the Act. (For example, an applicant may allege entry prior to July 1, 1924, in order to have the record of lawful admission created as of the date of claimed entry rather than as of the date the application is approved so as to be able to claim derivative citizenship if the subject was under the age of twenty-one as of the date for which the record is created and one parent was naturalized before that date. Likewise, the applicant may b e able to apply for naturalization at once without having to accumulate any additional period of residence from the time of approval of the application.) Furthermore, an applicant who entered the U.S. on or after January 1, 1972, might claim entry prior to that date in order to avoid deportation. It can also have a bearing on whether the applicant is eligible for certain other benefits not directly related to immigration law. Therefore, it is important that you exercise good judgment in determining whether the evidence establishes satisfactorily that the applicant in fact entered the U.S. prior to July 1, 1924 or January 1, 1972.

Note

An applicant who claims entry prior to July 1, 1924, but is only able to establish presence at some point after that date and before January 1, 1972, can only be granted permanent residence as of the date of approval of the application. Occasionally, such alien will later locate, and bring to the office, a document showing presence prior to July 1, 1924. In such situations, you should reopen the decision on USCIS motion (i.e., at no expense to the alien) and grant the more generous benefits.

- The term residence is defined in section 101(a)(33) of the Act. An alien may prove continuous residence in the U.S. since entry notwithstanding numerous brief departures from the U.S. (See

Matter of Outin , 14 I. & N. Dec. 6 (BIA 1972) .) Establishing continuity of residence is normally done through the submission of a number of documents covering the period of time since the claimed admission date. While there is no fixed number of documents which the applicant has to submit to cover the period in question, it must be enough to satisfy you as the adjudicating officer. When making your determination, you should take into account the length of time since the period in question (generally, the farther back the time involved, the more diffic ult it is to find documents), the circumstances of the individual applicant (a day laborer will have more difficulty obtaining documentation than a banker will) and other similar factors. That having been said, the burden is always on the applicant to prove eligibility for section 249 benefits, not on the government to disprove it. All section 249 applications must be accompanied by sufficient evidence to establish eligibility for the status sought. Exact, complete proof of continuous residence is not requi red; however, evidence should be submitted to show a pattern which will logically lead to the conclusion that the applicant has continuously resided in the U.S. for the period of time alleged. When considering the proof of residence submitted, pay particular attention to those periods of our history when aliens were leaving rather than entering this country (i.e., the depression and war years). For a further discussion on the issue of continuity of residence, see **Matter of Lee** , 11 I. & N. Dec. 34 (BIA 1965) ; **Matter of Lettman ,** 11 I. & N. Dec. 878 (RC 1966) ; **Matter of Outin** , 14 I. & N. Dec. 6 (BIA 1972) ; **Matter of Ting** , 11 I. & N. Dec. 849 (BIA 1966) ; **Matter of Young** , 11 I. & N. Dec. 38 (BIA 1965) ; **Matter of Benitez-Saenz** , 12 I. & N. Dec. 593 (BIA 1967) ; **Matter of Contreras-Sotelo** , 12 I. & N. Dec. 596 (BIA 1967) ; **Matter of P-** , 8 I. & N. Dec. 167 (RC 1958) ; *Matter of S-J-S-* , 8 I. & N. Dec. 463 (Asst. Comm'r 1959); **Matter of Harrison** , 13 I. & N. Dec. 540 (BIA 1970) ; and **Matter of Jalil ,** 19 I. & N. Dec. 679 (BIA 1988) .

· The term ineligible to citizenship as used in section 249 of the Act is defined in **section 101(a)(19)** of the Act, and only those aliens who are encompassed in that definition are barred from receiving the benefits of registry as a result of this phrase in section 249(d). It has long been held that section 101(a)(19) only pertains to "such aliens as draft evaders, avoiders, or deserters" (see **Matter of Martin-Arencibia** , 13 I. & N. Dec, 166 (RC 1969)). For example, an alien convicted of murder, though barred from becoming a citizen of the U.S., is not considered "ineligible to citizenship" as defined in section 101(a)(19) of the Act. Accordingly, you would not use this criterion to deny registry except in those cases where the alien's ineligibility for citizenship is due to draft evasion, avoidance or desertion or similar activities.

· Good moral character (GMC) is defined in **section 101(f)** of the Act. The requirement of GMC should be treated in a similar manner to the treatment of the requirement in the naturalization process, except that unlike the naturalization process, registry does not require that the alien establish GMC over any fixed period of time. The alien is only required to establish GMC during the time period encompassed by the registry application process. However, the fact that any person is not within any of the specific classes described in section 101(f) does not preclude a finding that for other reasons such person is or was not of GMC. (Note that in the example cited above in the discussion of ineligibility for citizenship, the fact that section 101(f)(8) bars anyone who has been ever been convicted of an aggregated felony (such as murder) from ever being regarded as a person of GMC. Accordingly, the registry application would be denied for failure to establish GMC in such case, in addition to the inadmissibility reason.) For a further discussion on the issue of good moral character, see **Matter of Carbajal** , 17 I. & N. Dec. 272 (BIA 1978) ; **Matter of Pirogl u** , 17 I. & N. Dec. 578 (BIA 1980) ; and **Matter of Sanchez-Linn ,** 20 I. & N. Dec. 362 (BIA 1991) .

· Inadmissibility is only an issue as it pertains to the grounds cited in section 249 of the Act. **Sections 212(a)(2)(A)** and **(B)** (criminals); **section 212(a)(2)(D)** (procurers and other immoral persons); **section 212(a)(3)** (subversives); **section 212(a)(2)(C)** (violators of narcotics laws); and

section 212(a)(6)(E) (smugglers of aliens) are the only inadmissibility grounds which apply. Certain of those grounds may be covered under section 212(h) of the Act, and if the alien is eligible he or she may apply for, and be granted, a waiver under such section.

· Deportability under Section 237(a)(4)(B) as a terrorist is slightly different than inadmissibility as a terrorist under **section 212(a)(3)(B)** . The deportation charge pertains only to those who have engaged, are engaged, or at any time after admission engage in any terrorist activity. The key definition is that of "engage in terrorist activity" (see **section 212(a)(3)(B)(iii)**) which does not include other certain activities described elsewhere in section 212(a)(3)(B) such as mere membership in a banned organization, even as a representative. However, as amended by the USAPatriot Act, §411(a) of Pub. L. 107-56 (2001), a member's actions might easily fall within this definition.

· Discretion comes into play once all the statutory eligibility issues have been resolved. Although a registry application by an alien who meets all the statutory criteria may be denied as a matter of discretion, such denials are extremely rare, due to the fact that the positive factor of having lived in the U.S. for such a long period of time and having created the resulting ties to this country outweigh all but the most negative discretionary factors. Use of discretion is discussed in **Chapter 10.15** of this *field manual* . For a discussion on use of discretionary in registry cases, see *Matter of DeLucia* , 11 I. & N. Dec. 565 (BIA 1966); *Matter of L-F-Y-* , 8 I. & N. Dec. 601 (Asst. Comm'r 1960); and **Matter of R-E,** 9 I. & N. Dec. 103 (Asst. Comm'r 1960) .

(f) Preliminary Processing .

The preliminary processing for a section 249 application is similar to that for section 245 applications. It is important that you try to obtain the applicant's A file, if one exists, before adjudicating the application. The alien's file may contain a record of lawful admission for permanent residence or evidence of qualifying residence. If there has been no attempt to verify the alien's arrival, you should attempt to do so. If you are able to locate a record of his or her arrival as a legal immigrant, the registry application should be statistically denied and the alien should be instructed to file an I-90 for evidence of his or her lawful permanent resident status. For a further discussion on the issue of record of admission "otherwise available," see *Matter of M-P* , 9 I. & N. Dec. 747 (BIA 1962); **Matter of Bufalino** , 11 I. & N. Dec. 351 (BIA 1965) ; **Matter of Preciado-Castillo** , 10 I. & N. Dec. 3 (BIA 1962) ; **Matter of Blanco** , 12 I. & N. Dec. 482 (DD 1967) ; and **Matter of Chu** , 14 I. & N. Dec. 241 (RC 1972) .

(g) Evidence .

It is important to remember that while photocopies of evidence may be submitted in support of a section 249 application, the applicant must bring the original documents to the interview (if requested). Originals may be returned if accompanied by copies. Also, some applicants will bring in boxes full of evidence to support their applications. In those cases all the evidence does not have to be retained in the record; however, be sure that the record is documented adequately. The type of evidence which may be accepted in section 249 cases is almost unlimited; however, some ideas for evidence which may be available are:

- Income tax records
- Deeds
- Insurance premiums and policies
- Birth, marriage, and death certificates of family members
- Medical records
- School records
- All types of receipts
- Census records
- Social security records
- Newspaper articles concerning the applicant
- Employment records
- Military records
- Draft records
- Union Membership records
- Affidavits from people having a personal knowledge of the applicant's residence in the U.S.

Note

Although affidavits are acceptable evidence which should be considered, an applicant should be able to produce additional evidence to support the claim.

(h) Interview .

It is important that applicants under section 249 be treated tactfully and courteously. Some may have long considered themselves to be “citizens” of the U.S. and are therefore particularly sensitive to the situation in which they find themselves.

After placing the applicant under oath, you should proceed to review the application with the applicant, making any necessary corrections in red ink and numbering them consecutively.

Many of the items on Form I-485 are not particularly pertinent to an application under section 249 because the form was designed primarily for applications under section 245 and other sections of law. However, you should devote particular attention to the following items:

· Name . The applicant should be closely questioned regarding all variations of names used, including foreign variations of any Americanized names, particularly the name used upon arrival in the U.S. Information developed concerning the alien's name may furnish data on which a further search may be based for a record of lawful admission for permanent residence.

· Date of Last Arrival in U.S. When the applicant has been absent from the U.S. on one or more occasions since the entry on which the application is based, you should question the applicant carefully to obtain all the facts regarding the date, place and manner of departure and reentry, and the purpose of each absence. It may be necessary to verify each departure and reentry from INS or USCIS records where the file does not already contain this information. You should remember that a temporary absence does not necessarily break the c ontinuity of the applicant's residence. Therefore, you must determine whether the evidence establishes that the applicant, by virtue of absence, did or did not break the continuity of residence. However, in any case in which the alien departed under an order of exclusion or deportation, continuity of residence is considered broken.

· Membership in Organizations . The applicant should be questioned regarding the completeness of the answer to this question and the nature of any organizations in which membership is admitted. When appropriate, a check should be made against the list of organizations contained in the list of Foreign Terrorist Organizations designated by the Secretary of State pursuant to section 219 of the Act. [This list can be found on the Department of State’s website on Global Terrorism or in Volume 9 of their Foreign Affairs Manual at §40.32 inter pretive note N6.6(c).] The possibility should not be overlooked that, when other evidence of the applicant's continuity of residence is missing, statements from the records of organizations, such as unions, regarding the period of the applicant's membership may be helpful.

· Violations of Law . The applicant should be questioned closely to determine the completeness of this answer. You should elicit any information bearing on any difficulties the applicant may have had with law enforcement authorities. If it should develop that the applicant is inadmissible under section 212(a)(2)(A)(i)(I), (2)(B), (2)(D)(i)&(ii) or (2)(A))i)(II)&(2)(C) in certain cases, and the applicant appears prima facie eligible for a waiver of excludability under section 212(h) by virtue of a relationship to a U.S. citizen or lawful permanent resident, give the applicant Form I-601, if that form has not already been filed. (Note: Arrest records can also be used to establish presence in the U.S.) For a discussion of the effect of a full and unconditional pardon of a narcotics conviction on an application for registry, see *Matter of Yuen* , 12 I. & N. Dec. 325 (BIA 1967) and **Matter of Lee** , 12 I. & N. Dec. 335 (BIA 1967).

· Request for Exemption or Discharge from Training or Service in the Armed Forces of the U.S. The answer to this question may be pertinent to a determination of whether the applicant is ineligible to citizenship and, therefore, ineligible for the benefits of section 249. You should be aware that ineligibility to citizenship may arise through draft evasion or desertion as well as relief from military service on grounds of alienage. If it is noted during interview or review of the file that the applicant was classified as IV-C by the Selective Service System, further inquiry should be made.

· Deportation Proceedings . The file may contain or refute a statement made by the applicant as to whether he or she has been subject to deportation proceedings. You should remember that the applicant's continuity of residence is considered broken by a departure pursuant to, or subsequent to, an order of removal, deportation or exclusion, regardless of the brevity of the ensuing absence.

· Arrival Data Concerning Entry on Which Application is Based . Be sure to check the entry data shown on any earlier application or papers contained in the file, particularly the original alien registration record because earlier statements by the applicant regarding the facts of claimed arrival may be more accurate. The applicant should be questioned closely to elicit any possibly useful information which may result in locating a record of admission. For example, the applicant may be asked about accompanying persons who may have been naturalized. Sometimes referral t o USCIS files of such persons is instrumental in locating data on which a further search of records or arrival may be based. If pertinent information is obtained, a further attempt to verify the arrival should be instituted. See **Chapter 14.2** regarding procedures for checking old ships manifests and other records.

At times, a record of arrival may be obtained which contains discrepancies in the name, age, birthplace, names of parents and other items. The applicant should be questioned to resolve the discrepancies. If, despite the discrepancies, you determine that the record relates to the applicant, a memorandum for the file stating how you reached that determination should be prepared.

· Jurat . You should review the supporting documents with the applicant and insert the numbers of the corrections made on the application before having the applicant swear or affirm the truth of the contents of the application and supporting documents. Remember that you must also sign the jurat at the time of the interview .

· Additional Interrogation . The questioning of the applicant should not be limited to the items on the application form. For example, ask questions to determine whether the applicant is a person of good moral character. Although the statute states that the establishment of good moral character is a requirement without specifying any period, inquiry should be made into the applicant's conduct for a reasonable time prior to the adjudication of the application.

Note

It is important to keep in mind the classes of aliens in 8 CFR 101 who are entitled to a presumption of lawful admission for permanent residence, such as aliens who establish entry prior to June 30, l906. If examination of the file and supporting documents or information obtained from the applicant or witnesses at the interview establishes that the applicant is entitled to a presumptive lawful admission, or if an actual record of lawful admission is located after the filing of the application, the applicant should be advised that the application for creation of record of lawful

admission is no longer necessary and that there is evidence of admission for permanent residence. In those cases, you should insure that Forms I-181 and I-89 are prepared so that Form I-551 may be issued to the applicant. The registry case should be counted statistically as a denial. See AFM Chpaters **23.4** and **40.1** for further information on presumption of lawful admission.

(i) Adjudication .

Before the case is finally adjudicated, you should make a complete check of the record and ascertain whether all necessary action has been taken. If the applicant has filed a waiver application under section 212(h), the decision on the waiver application must be rendered before rendering a final decision on the section 249 application. In those cases when the 212(h) is denied, the decision on the section 249 application should be held in abeyance until the appeal period has lapsed or the appellate decision rendered. (However, if the decision to deny the section 249 application would not be changed by the decision on the pending 212(h) waiver application, the section 249 application should be denied first (or concurrently). The application for a waiver should be denied as a matter of discretion because the issue is moot, and no purpose would be served by the grant of the application.)

(j) Closing Action .

(1) Grant Cases .

If the application is granted, institute the normal adjustment closing actions. Additionally, be sure to pick up any evidence of alien registration the applicant may have in his or her possession. Some aliens like to keep their old INS or DHS documents for keepsakes or other purposes. This is not permissible.

Make sure the Form I-181 reflects the correct date of admission for permanent residence. Remember, if the applicant establishes entry and continuous residence in the U.S. from a date prior to July 1, 1924, the date of admission for permanent residence is the date on which the applicant alleges to have entered the U.S. If the applicant can only establish continual residence in the U.S. from a date on or after July 1, 1924, and prior to January 1, 1972, the date of admission for permanent residence is the dat e you approve the application. The Form I-181 must also reflect the correct class of admission code:

- Z-03 Person who entered after June 30, 1924 and prior to June 28, 1940.
- Z-33 Person who entered prior to July 1, 1924.
- Z-66 Person who entered on or after June 28, 1940 and prior to January 1, 1972.

(Note that while there are only two “key dates” under section 249, there are three different class of admission codes. The date of permanent residence for either the Z-03 or Z-66 code is the date of approval.)

You must also insure that the I-89 contains an acceptable fingerprint and signature for ADIT purposes and that the pictures submitted are acceptable for production of the I-551. Remember, you are responsible for insuring that all ADIT requirements have been met.

(2) Denial Cases .

Normally, a registry application is denied on Form I-291. There is no appeal from the decision to deny a section 249 application; however, if removal proceedings are initiated, the alien may renew his or her application in such proceedings before the immigration judge.

If it is determined that USCIS should not require the alien to depart the U.S., the decision to deny must be certified to the Administrative Appeals Unit on Form I-290C (see **Chapter 10.18**).

If there is Headquarters, Congressional or other interest, you must insure that appropriate notification of the decision is sent to the interested person or office.

(k) Dependents .

There are no provisions for dependents (e.g., spouse or child) to receive any derivative benefits through the registry process. Once a registry application has been approved, the applicant (now a lawful permanent resident) may file an immigrant visa petition seeking second preference classification on behalf of a qualifying spouse, child, son or daughter under the normal I-130 petitioning process.
