

## 9 FAM 42.22 RETURNING RESIDENT ALIENS

*(CT: VISA-1416; 04-08-2010)  
(Office of Origin: CA/VO/L/R)*

### 9 FAM 42.22 RELATED STATUTORY PROVISIONS

*(CT: VISA-1283; 09-04-2009)*

See INA 101(a)(27)(A) (8 U.S.C. 1101(a)(27)(A)), INA 240A(a) (U.S.C. 1229b(a)), INA 222(b) (8 U.S.C. 1202(b)), INA 316 (8 U.S.C. 1427), and INA 317 (8 U.S.C. 1428).

#### **INA 101(a)(27)(A)**

(a) As used in this Act—

(27) The term “special immigrant” means—

(A) An immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad.

#### **INA 240A(a)**

(a) **Cancellation of removal for certain permanent residents**

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

- (1) Has been an alien lawfully admitted for permanent residence for not less than 5 years;
- (2) Has resided in the United States continuously for 7 years after having been admitted in any status; and
- (3) Has not been convicted of any aggravated felony.

#### **INA 222(b)**

(b) **Other documentary evidence for immigrant visa**

Every alien applying for an immigrant visa shall present a valid unexpired

passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. All immigrant visa applications shall be reviewed and adjudicated by a consular officer.

### **INA 316**

#### **(a) Residence**

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant,

- (1) Immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months;
- (2) Has resided continuously within the United States from the date of the application up to the time of admission to citizenship; and
- (3) During all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

#### **(b) Absences**

Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for

admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under section 1447 (a) of this title, shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

- (1) Prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries in such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and
- (2) Such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection

shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

**(c) Physical presence**

The granting of the benefits of subsection (b) of this section shall not relieve the applicant from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of this section of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing an application for naturalization.

**(d) Moral character**

No finding by the Attorney General that the applicant is not deportable shall be accepted as conclusive evidence of good moral character.

**(e) Determination**

In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period.

**(f) Persons making extraordinary contributions to national security**

- (1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within a particular State or district of the Service in the United States shall be required: Provided, That the applicant has continuously resided in the United States for at least one year prior to naturalization: Provided further, That the provisions of this subsection shall not apply to any alien described in clauses (i) through (v) of section 1158 (b)(2)(A) of this title.

- (2) An applicant for naturalization under this subsection may be administered the oath of allegiance under section 1448 (a) of this title by any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.
- (3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection.

### **INA 317**

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 1427 (a) of this title, notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

## **9 FAM 42.22 RELATED REGULATORY PROVISIONS**

*(CT: VISA-1416; 04-08-2010)*

See 22 CFR 42.22.

**22 CFR 42.22 Returning resident aliens.**

*(a) **Requirements for returning resident status.** An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:*

- (1) The alien had the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;*
- (2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and*
- (3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.*

*(b) **Documentation needed.** Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of Sec. 42.65(d) shall apply.*

*(c) **Returning resident alien originally admitted under the Act of December 28, 1945.** An alien admitted into the United States under Section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical defect or defects that existed at the time of the original admission.*