

§217.4

8 CFR Ch. I (1–1–03 Edition)

original Visa Waiver Pilot Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

[62 FR 10351, Mar. 6, 1997]

§217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.*

(1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with §208.2(b)(1) and (2) of this chapter.

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed

from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with §208.2(b)(1) and (2) of this chapter.

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32953, July 18, 1991; 62 FR 10351, Mar. 6, 1997]

§217.5 [Reserved]

§217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5

days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

[62 FR 10352, Mar. 6, 1997]

§ 217.7 Electronic data transmission requirement.

(a) *No waivers granted.* An alien who applies for admission under the provisions of the Visa Waiver Program pursuant to section 217 of the Act after arriving via sea or air at a port of entry will not be granted a waiver of the visa requirement of section 212(a)(7)(B)(i)(II) of the Act unless the carrier transporting such an alien is electronically transmitting the data required in paragraphs (b) and (c) of this section.

(b)(1) *Passenger arrival data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger transported by the carrier under section 217 of the Act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters, by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Service. The Service must receive the information for each passenger no later than 15 minutes after the flight or the vessel has departed from the last foreign port or place.

(2) *Passenger departure data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger departing the United States aboard the carrier after having been admitted under section 217 of the act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Serv-

ice. The Service must receive the information for each passenger no later than 15 minutes before the flight or vessel has departed from the United States. If additional passengers board after the original manifest has been submitted, or if passengers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States.

(c) *Required passenger and flight or vessel data elements.*

- (1) Last name.
- (2) First name.
- (3) Middle name or middle initial.
- (4) Date of birth.
- (5) Gender or sex (F=Female; M=Male).
- (6) Nationality.
- (7) Document number.
- (8) Country of document issuance.
- (9) Document type (*e.g.*, P=Passport, V=Visa, A=Alien registration card).
- (10) Airline International Air Transport Association (IATA) carrier code or vessel name.
- (11) Airline flight number, or tail number for private or corporate aircraft;
- (12) Date and time of scheduled flight or vessel arrival into the United States.
- (13) Date and time of scheduled flight or vessel departure from the United States.
- (14) Port of arrival.
- (15) Port of departure.
- (16) Contact name and number.
- (17) Traveler status (*e.g.*, P=Passenger, C=Crewmember).

[67 FR 63249, Oct. 11, 2002]

PART 221—ADMISSION OF VISITORS OR STUDENTS

AUTHORITY: 8 U.S.C. 1101, 1103, 1201; 8 CFR part 2.

§ 221.1 Admission under bond.

The district director having jurisdiction over the intended place of residence of an alien may accept a bond on behalf of an alien defined in section 101(a)(15)(B) or (F) of the Act prior to