

or have been found to be ineligible for admission into the United States for reasons that are not waivable. This rule also prevents the release of dangerous criminal aliens into society during deportation or exclusion proceedings.

**EFFECTIVE DATE:** This rule is effective May 31, 1995.

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**SUPPLEMENTARY INFORMATION:** The INS published a proposed rule on May 13, 1994 at 59 FR 24979. The proposed rule provided for automatic termination of temporary resident status under provisions of the Act upon the entry of a final order of deportation or exclusion. No comments were received and no changes have been made by the INS in preparing this final rule. This final rule will correct a procedural anomaly that has resulted in the release of aggravated felons who hold temporary resident status and which has impaired the ability of the INS to deport those who, after obtaining temporary resident status, commit deportable acts.

*Matter of Medrano*, Interim Decision #3138 (BIA September 10, 1990) (Medrano), holds that the status of a temporary resident alien must first be terminated pursuant to section 245A(b)(2) of the Act (8 U.S.C. 1255a(b)(2)) and in accordance with 8 CFR 245a.2(u) before any deportation proceedings can be commenced. That interpretation leaves the INS with conflicting mandates.

*Medrano* requires termination of temporary resident status before apprehension and commencement of deportation proceedings against a deportable alien, yet section 242(a)(2)(A) of the Act (8 U.S.C. 1252(a)(2)(A)) requires the INS to detain aggravated felons. *Medrano* and 8 CFR 245a.2(u)(2) also grant more procedural rights to temporary residents than to lawful permanent residents. Under *Medrano* and 8 CFR 245a.2(u)(2), the INS must terminate, as a condition precedent to the commencement of deportation proceedings, the temporary resident status of an alien who commits a deportable offense after he has acquired temporary resident status. In contrast, permanent residents may be deported upon commission of an

aggravated felony without first having their status terminated. This final rule, permitting deportation proceedings prior to terminating temporary status, conforms with other regulations currently in force with respect to automatic revocation of status of Special Agricultural Workers. See 8 CFR 210.4(d).

Thus, in order to avoid any delay or termination of deportation or exclusion proceedings that may be caused by invoking the termination procedure prescribed in 8 CFR 245a.2(u)(2) and to permit the expeditious deportation and removal of aggravated felons as required by section 242A(d) (8 U.S.C. 1252a(d)) and 242(i) (8 U.S.C. 1252(i)) of the Act, a new paragraph (ii) has been added to section 245a.2(u)(2). The new paragraph provides for the institution of deportation or exclusion proceedings and the automatic termination of temporary resident status upon the entry of a final order of deportation or exclusion in cases where: (1) The ground for deportation arises under section 241(a)(2)(A)(iii) of the Act (8 U.S.C. 1251(a)(2)(A)(iii)) (convicted aggravated felons); (2) the ground of deportation arises after the acquisition of temporary resident status, and that ground may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)) (relating to certain crimes, drug offenses, national security and likelihood of becoming a public charge); or (3) the alien seeks admission and the ground of inadmissibility may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This is not a significant rule within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

**List of Subjects in 8 CFR Part 245a**

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT**

1. The heading for part 245a is revised to read as set forth above.

2. The authority citation for part 245a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

3. Section 245a.2(u)(2) is amended by:

a. Designating the existing text of paragraph (u)(2) as paragraph (u)(2)(i);

b. Adding a new heading and revising the first sentence of paragraph (u)(2)(i); and

c. Adding a new paragraph (u)(2)(ii), to read as follows:

**§ 245a.2 Application for temporary residence.**

\* \* \* \* \*

(u) \* \* \*

(2) \* \* \*

(i) *Termination by the Service.* Except as provided in paragraph (u)(2)(ii) of this section, termination of an alien's temporary resident status under paragraph (u)(1) of this section will be made before instituting deportation proceedings against a temporary resident alien and only on notice sent to the alien by certified mail directed to his or her last known address, and to his or her representative, if any. \* \* \*

(ii) *Termination upon entry of final order of deportation or exclusion.* (A) The Service may institute deportation or exclusion proceedings against a temporary resident alien without regard to the procedures set forth in paragraph (u)(2)(i) of this section:

(1) If the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act (8 U.S.C. 1251(a)(2)(A)(iii));

(2) If the ground for deportation arises after the acquisition of temporary resident status, and the basis of such ground of deportation is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)); or

(3) If the ground for exclusion arises after the acquisition of temporary resident status and is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)).

(B) In such cases, the entry of a final order of deportation or exclusion will automatically terminate an alien's temporary resident status acquired under section 245A(a)(1) of the Act.

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