

9 FAM APPENDIX R, 300 ALIENS IN TEMPORARY RESIDENCE STATUS SEEKING TO RETURN TO THE UNITED STATES

*(CT:VISA-1087; 10-21-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM APPENDIX R, 301 AGRICULTURAL WORKERS

9 FAM Appendix R, 301.1 Temporary Residents with Form I-688

(TL:VISA-841; 10-05-2006)

- a. The Special Agricultural Worker (SAW) bearer of a Form I-688, Temporary Residence Card may be readmitted to the United States provided the alien is returning to an unrelinquished residence within one year after a temporary absence abroad and presents a Form I-688 (with a valid passport if coming from other than the Western Hemisphere or adjacent islands) and is otherwise admissible. (Temporary residents must be under a final order of deportation, not just under deportation proceedings, before their temporary residence status can be terminated.)
- b. If the consular officer is satisfied that the alien meets the above criteria, and a carrier has refused to permit the alien to board, the consular officer should issue a transportation letter to the effect that the alien has been properly documented to travel to the United States and that the carrier will not be subject to a fine for carrying that person to a port of entry to apply for readmission to the United States.

9 FAM Appendix R, 301.2 Expired or Lost Form I-688

(CT:VISA-841; 10-05-2006)

- a. If the consular officer encounters a SAW applicant with an expired or lost Form I-688, a cable must be sent to Department of Homeland Security

(DHS), COREC (Central Office Records) requesting verification of status. (The VISAS RACCOON format may be used for this purpose.)

- b. If there is confirmation that the temporary residence status is valid, the consular officer shall issue a transportation letter directing the port to admit the alien as a temporary resident.
- c. If the verification procedure reveals that temporary residence has been terminated, the consular officer may not issue a transportation letter but must lift and forward the alien's Form I-688 to the DHS Central Office, attn: COLEG (Central Office, Legalization) under cover of a memorandum.

9 FAM Appendix R, 301.3 Temporary Resident Applicants with Form I-688-A

(TL:VISA-841; 10-05-2006)

SAW applicants possessing a valid Form I-688-A, Employment Authorization who travel abroad may use this document to reenter the United States.

9 FAM Appendix R, 301.4 Expired or Lost Form I-688-A

(CT:VISA-1087; 10-21-2008)

- a. Consular officers should follow the same verification procedure as above if a SAW temporary resident seeks assistance as a result of a lost or expired Form I-688-A.
- b. If the verification procedure reveals that temporary residence status is pending, was granted, or was denied by the regional processing facility but an appeal is pending, the consular officer shall issue a transportation letter to the alien directing the port of entry to admit the applicant into the United States as either a temporary resident or an applicant for temporary resident status (whichever is appropriate). The consular officer must also advise the applicant to appear at the Legalization Office following admission into the United States to extend the Form I-688-A, to file Form I-695, Application for Replacement *of* Employment Authorization or Temporary Residence Card, for a replacement Form I-688-A, or to apply for a Form I-688, as appropriate.
- c. If the verification procedure reveals that temporary residence either was denied by the regional processing facility and no appeal is pending, or the appeal was denied, or the application was denied by the Legalization Office (irrespective of a pending appeal), the consular officer may not

issue the alien a transportation letter but must lift and forward the Form I-688-A to DHS Central Office, attn: COLEG, via memorandum.

- d. If a consular officer suspects or establishes that a SAW application is based on fraud but the verification procedure reveals that temporary residence is pending or was granted, a transportation letter must be issued directing the port of entry to admit the applicant as either a temporary resident or an applicant for temporary residence (whichever is appropriate). The consular officer must also forward a memorandum addressing the question of possible fraud to the DHS Central Office, attn: COLEG, for appropriate action.

9 FAM APPENDIX R, 302 LEGALIZATION APPLICANTS

9 FAM Appendix R, 302.1 Temporary Resident Applicants with Form I-688-A

(CT:VISA-1087; 10-21-2008)

- a. The Immigration Reform and Control Act of 1986 precludes the deportation of legalization applicants until a final determination has been made on their temporary resident application. Exclusion is not prohibited, however, if the applicant travels outside the United States during that period.
- b. Legalization applicants are not authorized to use Form I-688-A as a travel document. They must obtain advance parole (Form I-512-*L*) prior to departing the United States. If a legalization applicant in possession of an expired Form I-512-*L*, or one who failed to obtain a Form I-512-*L* before leaving the United States, seeks assistance from a consular officer, the post must send a cable to DHS, COREC, requesting verification of status.
- c. If the verification procedure confirms that temporary residence is pending or was granted, the consular officer should send a request for parole to the district director who issued the original Form I-512-*L*, or to DHS CORAP (Central Office Refugee, Asylum and Parole) if the alien failed to obtain a Form I-512-*L*.
- d. If the verification procedure reveals that temporary residence has been denied and no appeal is pending, parole should not be considered. Instead, the consular officer must lift the Form I-688-A, along with the

Form I-512-*L*, Authorization for Parole of an Alien into the United States if any, and forward them to the DHS Central Office, attn: COLEG via memorandum.

- e. If the verification procedure reveals that temporary residence has been denied and an appeal is pending, the Form I-688-A cannot be lifted until a final decision has been rendered.

9 FAM Appendix R, 302.2 Holders of Form I-688

(CT:VISA-841; 10-05-2006)

Unlike Form I-688-A, Form I-688 may be used as a travel document by either legalization (INA Section 245A) or SAW (INA Section 210) temporary residents.

9 FAM Appendix R, 302.3 Travel Restrictions on Legalization Temporary Residents

(CT:VISA-841; 10-05-2006)

Legalization (INA Section 245A) holders of Form I-688 can be absent from the United States for only brief periods. No single absence can exceed 30 days, and the total of all absences between the date of approval of temporary resident status and the date of application or eligibility for adjustment to permanent resident status (whichever is later) cannot exceed 90 days. Absences in excess of the 30 or 90 day limits shall break the continuity of residence in the United States unless emergent reasons or circumstances beyond the alien's control prevented the alien's timely return to the United States.