

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

§ 1151. Worldwide level of immigration

(a) In general

Exclusive of aliens described in subsection (b) of this section, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 1153(a) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(a) of this title) in a number not to exceed in any fiscal year the number specified in subsection (c) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

(2) employment-based immigrants described in section 1153(b) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(b) of this title), in a number not to exceed in any fiscal year the number specified in subsection (d) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 1153(c) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(c) of this title) in a number not to exceed in any fiscal year the number specified in subsection (e) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) Aliens not subject to direct numerical limitations

Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a) of this section, are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 1101(a)(27) of this title.

(B) Aliens who are admitted under section 1157 of this title or whose status is adjusted under section 1159 of this title.

(C) Aliens whose status is adjusted to permanent residence under section 1160 or 1255a of this title.

(D) Aliens whose removal is canceled under section 1229b(a) of this title.

(E) Aliens provided permanent resident status under section 1259 of this title.

(2)(A)(i) IMMEDIATE RELATIVES.—For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens

shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen’s death and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 1154(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(ii) Aliens admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(c) Worldwide level of family-sponsored immigrants

(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 480,000, minus

(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus

(iii) the number (if any) computed under paragraph (3).

(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) of this section who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(a) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(b) of this title (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(4) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1999) is the number of aliens who were paroled into the United States under section 1182(d)(5) of this title in the second preceding fiscal year—

(A) who did not depart from the United States (without advance parole) within 365 days; and

(B) who (i) did not acquire the status of aliens lawfully admitted to the United States for permanent residence in the two preceding fiscal years, or (ii) acquired such status in such years under a provision of law (other than subsection (b) of this section) which exempts such adjustment from the numerical limitation on the worldwide level of immigration under this section.

(5) If any alien described in paragraph (4) (other than an alien described in paragraph (4)(B)(ii)) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).

(d) Worldwide level of employment-based immigrants

(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

(A) 140,000, plus

(B) the number computed under paragraph (2).

(2)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(b) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(a) of this title (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(e) Worldwide level of diversity immigrants

The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.

(f) Rules for determining whether certain aliens are immediate relatives

(1) Age on petition filing date

Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i) of this section, a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 1154 of this title to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section.

(2) Age on parent's naturalization date

In the case of a petition under section 1154 of this title initially filed for an alien child's classification as a family-sponsored immigrant under section 1153(a)(2)(A) of this title, based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of

the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section, the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

(3) Age on marriage termination date

In the case of a petition under section 1154 of this title initially filed for an alien's classification as a family-sponsored immigrant under section 1153(a)(3) of this title, based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section or as an unmarried son or daughter of a citizen under section 1153(a)(1) of this title, the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.

(4) Application to self-petitions

Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

(June 27, 1952, ch. 477, title II, ch. 1, §201, 66 Stat. 175; Pub. L. 89-236, §1, Oct. 3, 1965, 79 Stat. 911; Pub. L. 94-571, §2, Oct. 20, 1976, 90 Stat. 2703; Pub. L. 95-412, §1, Oct. 5, 1978, 92 Stat. 907; Pub. L. 96-212, title II, §203(a), Mar. 17, 1980, 94 Stat. 106; Pub. L. 97-116, §20[(a)], Dec. 29, 1981, 95 Stat. 1621; Pub. L. 101-649, title I, §101(a), Nov. 29, 1990, 104 Stat. 4980; Pub. L. 102-232, title III, §302(a)(1), Dec. 12, 1991, 105 Stat. 1742; Pub. L. 103-322, title IV, §40701(b)(2), Sept. 13, 1994, 108 Stat. 1954; Pub. L. 103-416, title II, §219(b)(1), Oct. 25, 1994, 108 Stat. 4316; Pub. L. 104-208, div. C, title III, §308(e)(5), (g)(8)(A)(i), title VI, §§603, 671(d)(1)(A), Sept. 30, 1996, 110 Stat. 3009-620, 3009-624, 3009-690, 3009-723; Pub. L. 106-386, div. B, title V, §1507(a)(3), Oct. 28, 2000, 114 Stat. 1530; Pub. L. 107-208, §2, Aug. 6, 2002, 116 Stat. 927; Pub. L. 109-162, title VIII, §805(b)(1), Jan. 5, 2006, 119 Stat. 3056.)

AMENDMENTS

2006—Subsec. (f)(4). Pub. L. 109-162 added par. (4).

2002—Subsec. (f). Pub. L. 107-208 added subsec. (f).

2000—Subsec. (b)(2)(A)(i). Pub. L. 106-386 inserted at end "For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse."

1996—Subsec. (b)(1)(C). Pub. L. 104-208, §671(d)(1)(A), struck out " , 1161," after "section 1160".

Subsec. (b)(1)(D). Pub. L. 104-208, §308(g)(8)(A)(i), substituted "section 1229b(a)" for "section 1254(a)".

Pub. L. 104-208, §308(e)(5), substituted "removal is canceled" for "deportation is suspended".

Subsec. (c)(1)(A)(ii). Pub. L. 104-208, §603(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the number computed under paragraph (2), plus".

Subsec. (c)(4), (5). Pub. L. 104-208, §603(2), added pars. (4) and (5).

1994—Subsec. (b)(2)(A)(i). Pub. L. 103-416 inserted "(and each child of the alien)" after "death, the alien" in second sentence.

Pub. L. 103-322 substituted "1154(a)(1)(A)(ii)" for "1154(a)(1)(A)".

1991—Subsec. (c)(3). Pub. L. 102-232, §302(a)(1)(A), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted “The number computed under this paragraph for a subsequent fiscal year” for “The number computed under this paragraph for a fiscal year”.

Subsec. (d)(2). Pub. L. 102-232, §302(a)(1)(B), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted “The number computed under this paragraph for a subsequent fiscal year” for “The number computed under this paragraph for a fiscal year”.

1990—Pub. L. 101-649 amended section generally, substituting provisions setting forth general and worldwide levels for family-sponsored, employment-based, and diversity immigrants, for provisions setting forth numerical limitations on total lawful admissions without breakdown as to type.

1981—Subsec. (a). Pub. L. 97-116 inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101(a)(27)(H) of this title or section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect, to reduce to such extent the annual numerical limitation in effect for the following fiscal year.

1980—Subsec. (a). Pub. L. 96-212 inserted provisions relating to aliens admitted or granted asylums under section 1157 or 1158 of this title, struck out provisions relating to aliens entering conditionally under section 1153(a)(7) of this title, and decreased the authorized number from seventy-seven thousand to seventy-two thousand in each of the first three-quarters of any fiscal year, and from two hundred and ninety thousand to two hundred and seventy thousand in any fiscal year as the maximum number of admissions for such periods.

1978—Subsec. (a). Pub. L. 95-412 substituted provisions establishing a single worldwide annual immigration ceiling of 290,000 aliens and limiting to 77,000 the number of aliens subject to such ceiling which may be admitted in each of the first three quarters of any fiscal year for provisions establishing separate annual immigration ceilings of 170,000 aliens for the Eastern Hemisphere and 120,000 aliens for the Western Hemisphere and limiting to 45,000 the number of aliens subject to the Eastern Hemisphere ceiling and to 32,000 the number of aliens subject to the Western Hemisphere ceiling which may be admitted in the first three quarters of any fiscal year.

1976—Subsec. (a). Pub. L. 94-571, §2(1), in amending subsec. (a) generally, designated existing provisions as cl. (1) limited to aliens born in any foreign state or dependent area located in the Eastern Hemisphere and added cl. (2).

Subsecs. (c) to (e). Pub. L. 94-571, §2(2), struck out subsec. (c) which provided for determination of unused quota numbers, subsec. (d) which provided for an immigration pool, limitation on total numbers, and allocations therefrom, and subsec. (e) which provided for termination of immigration pool on June 30, 1968, and for carryover of admissible immigrants.

1965—Subsec. (a). Pub. L. 89-236 substituted provisions setting up a 170,000 maximum on total annual immigration and 45,000 maximum on total quarterly immigration without regard to national origins, for provisions setting an annual quota for quota areas which allowed admission of one-sixth of one per centum of portion of national population of continental United States in 1920 attributable by national origin of that quota area and setting a minimum quota of 100 for each quota area.

Subsec. (b). Pub. L. 89-236 substituted provisions defining “immediate relatives” for provisions calling for a determination of annual quota for each quota area by

Secretaries of State and Commerce and Attorney General, and proclamation of quotas by President.

Subsec. (c). Pub. L. 89-236 substituted provisions allowing carryover through June 30, 1968, of quotas for quota areas in effect on June 30, 1965, and redistribution of unused quota numbers, for provisions which limited issuance of immigrant visas.

Subsec. (d). Pub. L. 89-236 substituted provisions creating an immigration pool and allocating its numbers without reference to the quotas to which an alien is chargeable, for provisions allowing issuance of an immigrant visa to an immigrant as a quota immigrant even though he might be a nonquota immigrant.

Subsec. (e). Pub. L. 89-236 substituted provisions terminating the immigration pool on June 30, 1968, for provisions permitting reduction of annual quotas based on national origins pursuant to Act of Congress prior to effective date of proclaimed quotas.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-208, §8, Aug. 6, 2002, 116 Stat. 930, provided that: “The amendments made by this Act [amending this section and sections 1153, 1154, 1157, and 1158 of this title] shall take effect on the date of the enactment of this Act [Aug. 6, 2002] and shall apply to any alien who is a derivative beneficiary or any other beneficiary of—

“(1) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) approved before such date but only if a final determination has not been made on the beneficiary’s application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition;

“(2) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) pending on or after such date; or

“(3) an application pending before the Department of Justice or the Department of State on or after such date.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(5), (g)(8)(A)(i) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

Section 40701(d) of Pub. L. 103-322 provided that: “The amendments made by this section [amending this section and section 1154 of this title] shall take effect January 1, 1995.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-212 effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct.

1, 1979, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 20 of Pub. L. 89-236 provided that: "This Act [amending this section and sections 1101, 1152 to 1156, 1181, 1182, 1201, 1202, 1204, 1251, 1253, 1254, 1255, 1259, 1322, and 1351 of this title, repealing section 1157 of this title, and enacting provisions set out as a note under this section] shall become effective on the first day of the first month after the expiration of thirty days following the date of its enactment [Oct. 3, 1965] except as provided herein."

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

EXTENSION OF POSTHUMOUS BENEFITS TO SURVIVING SPOUSES, CHILDREN, AND PARENTS

Pub. L. 108-136, div. A, title XVII, §1703(a)-(e), Nov. 24, 2003, 117 Stat. 1693, provided that:

“(a) TREATMENT AS IMMEDIATE RELATIVES.—

“(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act [8 U.S.C. 1154(a)(1)(A)(ii)] within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

“(2) CHILDREN.—

“(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

“(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act [8 U.S.C. 1101 et seq.], such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

“(3) PARENTS.—

“(A) IN GENERAL.—In the case of an alien who was the parent of a citizen of the United States at the

time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

“(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

“(C) EXCEPTION.—Notwithstanding section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), for purposes of this paragraph, a citizen described in subparagraph (A) does not have to be 21 years of age for a parent to benefit under this paragraph.

“(b) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

“(1) IN GENERAL.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), any alien who was the spouse, child, or parent of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(B), may have such application adjudicated as if such death had not occurred.

“(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

“(B) died as a result of injury or disease incurred in or aggravated by combat; and

“(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

“(c) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

“(1) TREATMENT AS IMMEDIATE RELATIVES.—

“(A) IN GENERAL.—A spouse or child of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien, shall be considered (if the spouse or child has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

“(B) PETITIONS.—An alien spouse or child described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act [8 U.S.C. 1101 et seq.], such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

“(2) SELF-PETITIONS.—Any spouse or child of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant may file a petition for such classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) with the Secretary of Homeland Security, but only if the spouse or child files a petition within 2 years after such date. Such spouse or child

shall be eligible for deferred action, advance parole, and work authorization.

“(3) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

“(B) died as a result of injury or disease incurred in or aggravated by combat; and

“(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

“(d) PARENTS OF LAWFUL PERMANENT RESIDENT ALIENS.—

“(1) SELF-PETITIONS.—Any parent of an alien described in paragraph (2) may file a petition for classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), but only if the parent files a petition within 2 years after such date. For purposes of such Act [8 U.S.C. 1101 et seq.], such petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)). Such parent shall be eligible for deferred action, advance parole, and work authorization.

“(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

“(B) died as a result of injury or disease incurred in or aggravated by combat; and

“(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

“(e) WAIVER OF GROUND FOR INADMISSIBILITY.—In determining the admissibility of any alien accorded an immigration benefit under this section for purposes of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the ground for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.”

[Section 1703 of Pub. L. 108-136, set out above, effective as if enacted on Sept. 11, 2001, see section 1705(a) of Pub. L. 108-136, set out as an Effective Date of 2003 Amendment note under section 1439 of this title.]

TEMPORARY REDUCTION IN DIVERSITY VISAS

Pub. L. 105-100, title II, §203(d), Nov. 19, 1997, 111 Stat. 2199, as amended by Pub. L. 105-139, §1(d), Dec. 2, 1997, 111 Stat. 2644, provided that:

“(1) Beginning in fiscal year 1999, subject to paragraph (2), the number of visas available for a fiscal year under section 201(e) of the Immigration and Nationality Act [8 U.S.C. 1151(e)] shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

“(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which—

“(A) one-half of the total number of individuals described in subclauses (I), (II), (III), and (IV) of section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104-208, set out as a note under section 1101 of this title] who have adjusted their status to that of aliens lawfully admitted for permanent residence under the Nicaraguan Adjustment and Central American Relief Act [title II of Pub. L. 105-100, see Short Title of 1997 Amendments note set out under section 1101 of this title] as of the end of the previous fiscal year; exceeds

“(B) the total of the reductions in available visas under this subsection for all previous fiscal years.”

TRANSITION RELATING TO DEATH OF CITIZEN SPOUSE

Section 101(c) of Pub. L. 101-649, as added by Pub. L. 102-232, title III, §302(a)(2), Dec. 12, 1991, 105 Stat. 1742, provided that: “In applying the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)(A)(i)] (as amended by subsection

(a)) in the case of a [sic] alien whose citizen spouse died before the date of the enactment of this Act [Nov. 29, 1990], notwithstanding the deadline specified in such sentence the alien spouse may file the classification petition referred to in such sentence within 2 years after the date of the enactment of this Act.”

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in subsec. (a) of this section not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97-271, set out as a note under section 1255 of this title.

EXEMPTION FROM NUMERICAL LIMITATIONS FOR CERTAIN ALIENS WHO APPLIED FOR ADJUSTMENT TO STATUS OF PERMANENT RESIDENT ALIENS ON OR BEFORE JUNE 1, 1978

Section 19 of Pub. L. 97-116 provided that: “The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title] shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

“(1) qualified as a nonpreference immigrant under section 203(a)(8) of such Act [section 1153(a)(8) of this title] (as in effect on June 1, 1978);

“(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act [former section 1182(a)(14) of this title] because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

“(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.”

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Section 4 of Pub. L. 95-412, as amended by Pub. L. 96-132, §23, Nov. 30, 1979, 93 Stat. 1051, provided for the establishment of a Select Commission on Immigration and Refugee Policy to study and evaluate existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States, to make such administrative and legislative recommendations to the President and Congress as appropriate, and to submit a final report no later than Mar. 1, 1981, at which time it ceased to exist although it was authorized to function for up to 60 days thereafter to wind up its affairs.

SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Section 21(a)-(d) and (f)-(h) of Pub. L. 89-236 established a Select Commission on Western Hemisphere Immigration to study the operation of the immigration laws of the United States as they pertain to Western Hemisphere nations, with emphasis on the adequacy of such laws from the standpoint of fairness and the impact of such laws on employment and working conditions within the United States, and to make a final report to the President on or before Jan. 15, 1968, and terminate not later than 60 days after filing the final report.

TERMINATION OF QUOTA DEDUCTIONS

Section 10 of Pub. L. 85-316, Sept. 11, 1957, 71 Stat. 642, provided that the quota deductions required under the

provisions of former subsec. (e) of this section, the Displaced Persons Act of 1948, as amended, the act of June 30, 1950, and the act of April 9, 1952 were terminated effective July 1, 1957.

§ 1151a. Repealed. Pub. L. 94-571, § 7(g), Oct. 20, 1976, 90 Stat. 2706

Section, Pub. L. 89-236, § 21(e), Oct. 3, 1965, 79 Stat. 921, limited total number of special immigrants under section 1101(a)(27)(A) of this title, less certain exclusions, to 120,000 for fiscal years beginning July 1, 1968, or later.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 60 days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

§ 1152. Numerical limitations on individual foreign states

(a) Per country level

(1) Nondiscrimination

(A) Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.

(2) Per country levels for family-sponsored and employment-based immigrants

Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immi-

grants described in section 1153(a)(2)(A) of this title in any fiscal year, 75 percent of the 2-A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2-A floor" defined

In this paragraph, the term "2-A floor" means, for a fiscal year, 77 percent of the total number of visas made available under section 1153(a) of this title to immigrants described in section 1153(a)(2) of this title in the fiscal year.

(B) Treatment of remaining 25 percent for countries subject to subsection (e)

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, the remaining 25 percent of the 2-A floor shall be available in the case of a state or area that is subject to subsection (e) of this section only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

(ii) "Subsection (e) ceiling" defined

In clause (i), the term "subsection (e) ceiling" means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants who are natives of the state or area under section 1153(a)(2) of this title consistent with subsection (e) of this section.

(C) Treatment of unmarried sons and daughters in countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, the number of immigrant visas that may be made available to natives of the state or area under section 1153(a)(2)(B) of this title may not exceed—

(i) 23 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e) of this section, or

(ii) the number (if any) by which the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e) of this section exceeds the number of visas issued under section 1153(a)(2)(A) of this title,

whichever is greater.

(D) Limiting pass down for certain countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, if the total number of visas issued under section 1153(a)(2) of this title exceeds the maximum number of visas that may be

made available to immigrants of the state or area under section 1153(a)(2) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 1153(a) of this title under subsection (e)(2) of this section all visas shall be deemed to have been required for the classes specified in paragraphs (1) and (2) of such section.

(5) Rules for employment-based immigrants

(A) Employment-based immigrants not subject to per country limitation if additional visas available

If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 1153(b) of this title for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

(B) Limiting fall across for certain countries subject to subsection (e) of this section

In the case of a foreign state or dependent area to which subsection (e) of this section applies, if the total number of visas issued under section 1153(b) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153(b) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying subsection (e) of this section all visas shall be deemed to have been required for the classes of aliens specified in section 1153(b) of this title.

(b) Rules for chargeability

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to

join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Chargeability for dependent areas

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 1151(b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a) of this section, to the foreign state.

(d) Changes in territory

In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change issue appropriate instructions to all diplomatic and consular offices.

(e) Special rules for countries at ceiling

If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 1153 of this title to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) of this section in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 1153 of this title, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 1153 of this title) in a manner so that—

(1) the ratio of the visa numbers made available under section 1153(a) of this title to the visa numbers made available under section 1153(b) of this title is equal to the ratio of the worldwide level of immigration under section 1151(c) of this title to such level under section 1151(d) of this title;

(2) except as provided in subsection (a)(4) of this section, the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 1153(a) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(a) of this title, and

(3) except as provided in subsection (a)(5) of this section, the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 1153(b) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(b) of this title.

Nothing in this subsection shall be construed as limiting the number of visas that may be issued

to natives of a foreign state or dependent area under section 1153(a) or 1153(b) of this title if there is insufficient demand for visas for such natives under section 1153(b) or 1153(a) of this title, respectively, or as limiting the number of visas that may be issued under section 1153(a)(2)(A) of this title pursuant to subsection (a)(4)(A) of this section.

(June 27, 1952, ch. 477, title II, ch. 1, § 202, 66 Stat. 176; Pub. L. 87-301, § 9, Sept. 26, 1961, 75 Stat. 654; Pub. L. 89-236, § 2, Oct. 3, 1965, 79 Stat. 911; Pub. L. 94-571, § 3, Oct. 20, 1976, 90 Stat. 2703; Pub. L. 95-412, § 2, Oct. 5, 1978, 92 Stat. 907; Pub. L. 96-212, title II, § 203(b), Mar. 17, 1980, 94 Stat. 107; Pub. L. 97-116, §§ 18(c), 20(b), Dec. 29, 1981, 95 Stat. 1620, 1622; Pub. L. 99-603, title III, § 311(a), Nov. 6, 1986, 100 Stat. 3434; Pub. L. 99-653, § 4, Nov. 14, 1986, 100 Stat. 3655; Pub. L. 100-525, §§ 8(c), 9(f), Oct. 24, 1988, 102 Stat. 2617, 2620; Pub. L. 101-649, title I, § 102, Nov. 29, 1990, 104 Stat. 4982; Pub. L. 102-232, title III, § 302(a)(3), Dec. 12, 1991, 105 Stat. 1742; Pub. L. 104-208, div. C, title VI, § 633, Sept. 30, 1996, 110 Stat. 3009-701; Pub. L. 106-313, title I, § 104(a), (b), Oct. 17, 2000, 114 Stat. 1252, 1253.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106-313, § 104(b)(1), substituted “paragraphs (3), (4), and (5)” for “paragraphs (3) and (4)”.

Subsec. (a)(5). Pub. L. 106-313, § 104(a), added par. (5).

Subsec. (e)(3). Pub. L. 106-313, § 104(b)(2), substituted “except as provided in subsection (a)(5) of this section, the proportion of the visa numbers” for “the proportion of the visa numbers”.

1996—Subsec. (a)(1). Pub. L. 104-208 designated existing provisions as subpar. (A) and added subpar. (B).

1991—Subsec. (a)(4)(A). Pub. L. 102-232 struck out “minimum” before “2nd preference set-aside” in heading.

1990—Subsec. (a). Pub. L. 101-649, § 102(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in sections 1101(a)(27), 1151(b), and 1153 of this title: *Provided*, That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 1153(a) of this title shall not exceed 20,000 in any fiscal year: *And provided further*, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitations of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 1101(a)(27) of this title or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.”

Subsec. (b). Pub. L. 101-649, § 102(2), inserted heading and substituted reference to numerical level established under subsec. (a)(2) of this section for reference to numerical limitation set forth in proviso to subsec. (a) of this section, wherever appearing.

Subsec. (c). Pub. L. 101-649, § 102(3), inserted heading and substituted “an alien described in section 1151(b) of this title” for “a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of

this title” and struck out “, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year” after “to the foreign state”.

Subsec. (d). Pub. L. 101-649, § 102(4), inserted heading.

Subsec. (e). Pub. L. 101-649, § 102(5), amended subsec. (e) generally, substituting provisions relating to special rules for countries at ceiling for provisions relating to availability and allocation of additional visas.

1988—Subsec. (b). Pub. L. 100-525, § 8(c), amended Pub. L. 99-653, § 4. See 1986 Amendment note below.

Subsec. (c). Pub. L. 100-525, § 9(f)(1), substituted “subsection (a)” for “section 202(a)” in original, which for purposes of codification had been translated as “subsection (a) of this section”.

Subsec. (e). Pub. L. 100-525, § 9(f)(2), substituted “this section” for “section 202” in original, which for purposes of codification had been translated as “this section”.

1986—Subsec. (b). Pub. L. 99-653, as amended by Pub. L. 100-525, § 8(c), amended subsec. (b) generally, substituting “outlying possessions, shall” for “outlying possessions shall”, in cl. (1) substituting “when accompanied by or following to join his alien” for “when accompanied by his alien”, “charged to the foreign state of either parent” for “charged to the same foreign state as the accompanying parent or of either accompanying parent”, “from the parent” for “from the accompanying parent”, “and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical”, in cl. (2) substituting “of his spouse” for “of his accompanying spouse”, “of the spouse he is accompanying or following to join” for “of the accompanying spouse”, “and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical”, and in cl. (3) substituting “subject, or, if” for “subject, or if” and “country, in” for “country then in”.

Subsec. (c). Pub. L. 99-603, § 311(a)(1), substituted “5,000” for “six hundred”.

Subsec. (e). Pub. L. 99-603, § 311(a)(2), substituted “5,000” for “600” in provisions preceding par. (1).

1981—Subsec. (a). Pub. L. 97-116, § 20(b), inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of natives who are issued visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101(a)(27)(H) of this title and section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect for such year, to reduce to such extent the numerical limitation in effect for the natives of the same foreign state for the following fiscal year.

Subsec. (b). Pub. L. 97-116, § 18(c), inserted “and” before “(4)”.

1980—Subsec. (a). Pub. L. 96-212, § 203(b)(1), (2), substituted “through (7)” for “through (8)”, and struck out “and the number of conditional entries” after “visas”.

Subsec. (e). Pub. L. 96-212, § 203(b)(3)-(7), in introductory text struck out provisions relating to applicability to conditional entries, in par. (2) substituted “(26)” for “(20)”, struck out par. (7) relating to availability of conditional entries, and redesignated par. (8) as (7) and substituted “through (6)” for “through (7)”.

1978—Subsec. (c). Pub. L. 95-412 substituted “limitation set forth in subsection (a) of this section, to the foreign state,” for “limitations set forth in section 1151(a) and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively,” and “six hundred” for “600”.

1976—Subsec. (a). Pub. L. 94-571, §3(1), struck out last proviso which read: “*Provided further*, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968”.

Subsec. (c). Pub. L. 94-571, §3(2), in revising provisions, substituted “overseas from the foreign state, other than a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title, shall be chargeable for the purpose of the limitations set forth in section 1151(a) of this title and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year” for “unless a special immigrant as provided in section 1101(a)(27) of this title or an immediate relative of a United States citizen as specified in section 1151(b) of this title, shall be chargeable, for the purpose of limitation set forth in subsection (a) of this section, to the foreign state, except that the number of persons born in any such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state”.

Subsec. (e). Pub. L. 94-571, §3(3), added subsec. (e).

1965—Subsec. (a). Pub. L. 89-236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (b). Pub. L. 89-236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandated territory, and trusteeship territory as a separate foreign state for purposes of determining the numerical limitation imposed on each foreign state, and chargeability of immigrants to the country of their birth except where such chargeability would cause the family unit to be divided, for provisions setting up the Asia-Pacific triangle and providing for the special treatment of quota chargeability thereunder on the basis of racial ancestry.

Subsec. (c). Pub. L. 89-236 substituted provisions making immigrants born in colonies or other component or dependent areas of a foreign state chargeable to the foreign state and placing a limitation on the number of such immigrants of 1 per centum of the maximum number of visas available to the foreign state, for provisions making immigrants born in colonies for which no specific quota are set chargeable to the governing country and placing a limit of 100 on such immigrants from each governing country each year, with special application to the Asia-Pacific triangle.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring Secretary of State, upon a change in the territorial limits of foreign states, to issue appropriate instructions to all diplomatic and consular offices, for provisions that the terms of an immigration quota for a quota area do not constitute recognition of the transfer of territory or of a government not recognized by the United States.

Subsec. (e). Pub. L. 89-236 repealed subsec. (e) which allowed revision of quotas.

1961—Subsec. (e). Pub. L. 87-301 provided that if an area undergoes a change of administrative arrangements, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area im-

mediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(c) of Pub. L. 100-525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653, see section 309(b)(15) of Pub. L. 102-232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99-653, set out as a note under section 1101 of this title.

Section 311(b) of Pub. L. 99-603 provided that: “The amendments made by subsection (a) [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 6, 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-212 effective, except as otherwise provided, Apr. 1, 1980, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

TREATMENT OF HONG KONG UNDER PER COUNTRY LEVELS

Section 103 of Pub. L. 101-649 provided that: “The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [8 U.S.C. 1152(b)] shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act [8 U.S.C. 1153(a), (b)] in each of fiscal years 1991, 1992, and 1993 may not exceed 10,000.”

[Section 103 of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out

as an Effective Date of 1990 Amendment note under section 1101 of this title.]

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in text not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97-271, set out as a note under section 1255 of this title.

EXEMPTION FROM NUMERICAL LIMITATIONS FOR CERTAIN ALIENS WHO APPLIED FOR ADJUSTMENT TO STATUS OF PERMANENT RESIDENT ALIENS ON OR BEFORE JUNE 1, 1978

For provisions rendering inapplicable the numerical limitations contained in this section to certain aliens who had applied for adjustment to the status of permanent resident alien on or before June 1, 1978, see section 19 of Pub. L. 97-116, set out as a note under section 1151 of this title.

APPROVAL BY SECRETARY OF STATE TREATING TAIWAN (CHINA) AS SEPARATE FOREIGN STATE FOR PURPOSES OF NUMERICAL LIMITATION ON IMMIGRANT VISAS

Pub. L. 97-113, title VII, §714, Dec. 29, 1981, 95 Stat. 1548, provided that: "The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [subsec. (b) of this section] shall be considered to have been granted with respect to Taiwan (China)."

§ 1153. Allocation of immigrant visas

(a) Preference allocation for family-sponsored immigrants

Aliens subject to the worldwide level specified in section 1151(c) of this title for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens

Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens

Qualified immigrants—

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) Married sons and married daughters of citizens

Qualified immigrants who are the married sons or married daughters of citizens of the

United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) Brothers and sisters of citizens

Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) Preference allocation for employment-based immigrants

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) Priority workers

Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability

An alien is described in this subparagraph if—

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(B) Outstanding professors and researchers

An alien is described in this subparagraph if—

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States—

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) Certain multinational executives and managers

An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer

(i) National interest waiver

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities

(I) In general

The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) Prohibition

No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State

under section 1154(b) of this title, and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 1255 of this title, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 1101(a)(15)(J) of this title), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Statutory construction

Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 1154(a) of this title, or the filing of an application for adjustment of status under section 1255 of this title, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) Effective date

The requirements of this subsection do not affect waivers on behalf of alien physicians approved under subsection (b)(2)(B) of this section before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under subsection (b)(2)(B) of this section prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) of this section except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 1101(a)(15)(J) of this title) before a visa can be issued to the alien under section 1154(b) of this title or the status of the alien is adjusted to permanent resident under section 1255 of this title.

(C) Determination of exceptional ability

In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) Skilled workers, professionals, and other workers

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers

Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals

Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) Other workers

Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(B) Limitation on other workers

Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

(C) Labor certification required

An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(5)(A) of this title.

(4) Certain special immigrants

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 1101(a)(27) of this title (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 1101(a)(27)(C)(ii) of this title, and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title.

(5) Employment creation**(A) In general**

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)—

(i) in which such alien has invested (after November 29, 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant

and the immigrant's spouse, sons, or daughters).

(B) Set-aside for targeted employment areas**(i) In general**

Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.

(ii) "Targeted employment area" defined

In this paragraph, the term "targeted employment area" means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).

(iii) "Rural area" defined

In this paragraph, the term "rural area" means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

(C) Amount of capital required**(i) In general**

Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

(ii) Adjustment for targeted employment areas

The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than ½ of) the amount specified in clause (i).

(iii) Adjustment for high employment areas

In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment—

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate,

the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i).

(D) Full-time employment defined

In this paragraph, the term "full-time employment" means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

(6) Special rules for “K” special immigrants**(A) Not counted against numerical limitation in year involved**

Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 1101(a)(27)(K) of this title in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 1152(a) of this title.

(B) Counted against numerical limitations in following year**(i) Reduction in employment-based immigrant classifications**

The number of visas made available in any fiscal year under paragraphs (1), (2), and (3) shall each be reduced by $\frac{1}{3}$ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title.

(ii) Reduction in per country level

The number of visas made available in each fiscal year to natives of a foreign state under section 1152(a) of this title shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(iii) Reduction in employment-based immigrant classifications within per country ceiling

In the case of a foreign state subject to section 1152(e) of this title in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by $\frac{1}{3}$ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(c) Diversity immigrants**(1) In general**

Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) Determination of preference immigration

The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 1151(a) of this title (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 1151(b)(2) of this title.

(B) Identification of high-admission and low-admission regions and high-admission and low-admission states

The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a “high-admission region”) for which the total of the numbers determined under subparagraph (A) for states in the region is greater than $\frac{1}{6}$ of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a “low-admission region”); and

(ii) shall identify—

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a “high-admission state”), and

(II) each other foreign state (each such state in this paragraph referred to as a “low-admission state”).

(C) Determination of percentage of worldwide immigration attributable to high-admission regions

The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) Determination of regional populations excluding high-admission states and ratios of populations of regions within low-admission regions and high-admission regions

The Attorney General shall determine—

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) Distribution of visas**(i) No visas for natives of high-admission states**

The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) For low-admission states in low-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) For low-admission states in high-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

- (I) 100 percent minus the percentage determined under subparagraph (C), and
- (II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) Redistribution of unused visa numbers

If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) Limitation on visas for natives of a single foreign state

The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(F) "Region" defined

Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

- (i) Africa.
- (ii) Asia.
- (iii) Europe.
- (iv) North America (other than Mexico).
- (v) Oceania.
- (vi) South America, Mexico, Central America, and the Caribbean.

(2) Requirement of education or work experience

An alien is not eligible for a visa under this subsection unless the alien—

- (A) has at least a high school education or its equivalent, or
- (B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

(3) Maintenance of information

The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(d) Treatment of family members

A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of

this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) Order of consideration

(1) Immigrant visas made available under subsection (a) or (b) of this section shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 1101(a)(27)(D) of this title, with the Secretary of State) as provided in section 1154(a) of this title.

(2) Immigrant visa numbers made available under subsection (c) of this section (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) Authorization for issuance

In the case of any alien claiming in his application for an immigrant visa to be described in section 1151(b)(2) of this title or in subsection (a), (b), or (c) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 1154 of this title.

(g) Lists

For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) of this section and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

(h) Rules for determining whether certain aliens are children**(1) In general**

For purposes of subsections (a)(2)(A) and (d) of this section, a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using—

(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d) of this section, the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of

an alien lawfully admitted for permanent residence within one year of such availability; reduced by

(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

(2) Petitions described

The petition described in this paragraph is—

(A) with respect to a relationship described in subsection (a)(2)(A) of this section, a petition filed under section 1154 of this title for classification of an alien child under subsection (a)(2)(A) of this section; or

(B) with respect to an alien child who is a derivative beneficiary under subsection (d) of this section, a petition filed under section 1154 of this title for classification of the alien's parent under subsection (a), (b), or (c) of this section.

(3) Retention of priority date

If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d) of this section, the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.

(4) Application to self-petitions

Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

(June 27, 1952, ch. 477, title II, ch. 1, § 203, 66 Stat. 178; Pub. L. 85-316, § 3, Sept. 11, 1957, 71 Stat. 639; Pub. L. 86-363, §§ 1-3, Sept. 22, 1959, 73 Stat. 644; Pub. L. 89-236, § 3, Oct. 3, 1965, 79 Stat. 912; Pub. L. 94-571, § 4, Oct. 20, 1976, 90 Stat. 2705; Pub. L. 95-412, § 3, Oct. 5, 1978, 92 Stat. 907; Pub. L. 95-417, § 1, Oct. 5, 1978, 92 Stat. 917; Pub. L. 96-212, title II, § 203(c), (i), Mar. 17, 1980, 94 Stat. 107, 108; Pub. L. 101-649, title I, §§ 111, 121(a), 131, 162(a)(1), title VI, § 603(a)(3), Nov. 29, 1990, 104 Stat. 4986, 4987, 4997, 5009, 5082; Pub. L. 102-110, § 2(b), Oct. 1, 1991, 105 Stat. 555; Pub. L. 102-232, title III, § 302(b)(2), (e)(3), Dec. 12, 1991, 105 Stat. 1743, 1745; Pub. L. 103-416, title II, §§ 212(b), 219(c), Oct. 25, 1994, 108 Stat. 4314, 4316; Pub. L. 106-95, § 5, Nov. 12, 1999, 113 Stat. 1318; Pub. L. 106-113, div. B, § 1000(a)(1) [title I, § 117], Nov. 29, 1999, 113 Stat. 1535, 1501A-21; Pub. L. 106-536, § 1(b)(1), Nov. 22, 2000, 114 Stat. 2560; Pub. L. 107-208, § 3, Aug. 6, 2002, 116 Stat. 928; Pub. L. 107-273, div. C, title I, §§ 11035, 11036(a), Nov. 2, 2002, 116 Stat. 1846; Pub. L. 109-162, title VIII, § 805(b)(2), Jan. 5, 2006, 119 Stat. 3056.)

REFERENCES IN TEXT

The enactment date of this subsection, referred to in subsec. (b)(2)(B)(ii)(IV), probably means the date of enactment of Pub. L. 106-95, which amended subsec. (b)(2)(B) of this section generally, and which was approved Nov. 12, 1999.

AMENDMENTS

2006—Subsec. (h)(4). Pub. L. 109-162 added par. (4).

2002—Subsec. (b)(5)(A). Pub. L. 107-273, § 11036(a)(1)(A), substituted “enterprise (including a limited partnership)—” for “enterprise—” in introductory provisions.

Subsec. (b)(5)(A)(i) to (iii). Pub. L. 107-273, § 11036(a)(1)(B), (C), redesignated cls. (ii) and (iii) as (i)

and (ii), respectively, and struck out former cl. (i) which read as follows: “which the alien has established.”

Subsec. (b)(5)(B)(i). Pub. L. 107-273, § 11036(a)(2), substituted “invest in” for “establish”.

Subsec. (b)(5)(D). Pub. L. 107-273, § 11035, added subpar. (D).

Subsec. (h). Pub. L. 107-208 added subsec. (h).

2000—Subsec. (b)(4). Pub. L. 106-536 inserted before period at end “, and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title”.

1999—Subsec. (b)(2)(B). Pub. L. 106-95 and Pub. L. 106-113 amended subpar. (B) generally in substantially identical manner. Pub. L. 106-95 provided headings. Text is based on Pub. L. 106-113. Prior to amendment, text read as follows: “The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.”

1994—Subsec. (b)(5)(B), (C). Pub. L. 103-416, § 219(c), substituted “Targeted” and “targeted” for “Targetted” and “targetted”, respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103-416, § 212(b), struck out subpar. (C) which related to application of separate numerical limitations.

1991—Subsec. (b)(1). Pub. L. 102-232, § 302(b)(2)(A), substituted “28.6 percent of such worldwide level” for “40,000”.

Subsec. (b)(1)(C). Pub. L. 102-232, § 302(b)(2)(B), substituted “the alien seeks” for “who seeks”.

Subsec. (b)(2)(A). Pub. L. 102-232, § 302(b)(2)(A), substituted “28.6 percent of such worldwide level” for “40,000”.

Subsec. (b)(2)(B). Pub. L. 102-232, § 302(b)(2)(D), inserted “professions,” after “arts.”.

Subsec. (b)(3)(A). Pub. L. 102-232, § 302(b)(2)(A), substituted “28.6 percent of such worldwide level” for “40,000”.

Subsec. (b)(4), (5)(A). Pub. L. 102-232, § 302(b)(2)(C), substituted “7.1 percent of such worldwide level” for “10,000”.

Subsec. (b)(6). Pub. L. 102-110 added par. (6).

Subsec. (f). Pub. L. 102-232, § 302(e)(3), substituted “Authorization for issuance” for “Presumption” in heading, struck out at beginning “Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 1101(a)(27) of this title, or section 1151(b)(2) of this title, until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described.”, and substituted “1151(b)(2) of this title or in subsection (a), (b), or (c)” for “1151(b)(1) of this title or in subsection (a) or (b)”.

1990—Subsec. (a). Pub. L. 101-649, § 111(2), added subsec. (a) and struck out former subsec. (a) which related to allocation of visas of aliens subject to section 1151(a) limitations.

Subsec. (a)(7). Pub. L. 101-649, § 603(a)(3), substituted “section 1182(a)(5) of this title” for “section 1182(a)(14) of this title”.

Subsec. (b). Pub. L. 101-649, §§ 111(1), 121(a), added subsec. (b) and redesignated former subsec. (b) as (d).

Subsec. (c). Pub. L. 101-649, §§ 111(1), 131, added subsec. (c) and redesignated former subsec. (c) as (e).

Subsec. (d). Pub. L. 101-649, § 162(a)(1), added subsec. (d) and struck out former subsec. (d) which related to order of consideration given applications for immigrant visas.

Pub. L. 101-649, § 111(1), redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 101-649, § 162(a)(1), added subsec. (e) and struck out former subsec. (e) which related to order of issuance of immigrant visas.

Pub. L. 101-649, § 111(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 101-649, § 162(a)(1), added subsec. (f) and struck out former subsec. (f) which related to pre-

sumption of nonpreference status and grant of status by consular officers.

Pub. L. 101-649, §111(1), redesignated subsec. (d) as (f). Subsec. (g). Pub. L. 101-649, §162(a)(1), added subsec. (g) and struck out former subsec. (g) which related to estimates of anticipated numbers of visas to be issued, termination and reinstatement of registration of aliens, and revocation of approval of petition.

Pub. L. 101-649, §111(1), redesignated subsec. (e) as (g). 1980—Subsec. (a). Pub. L. 96-212, §203(c)(1)–(6), in introductory text struck out applicability to conditional entry, in par. (2) substituted “(26)” for “(20)”, struck out par. (7) relating to availability of conditional entries, redesignated former par. (8) as (7) and struck out applicability to number of conditional entries and visas available under former par. (7), and redesignated former par. (9) as (8) and substituted provisions relating to applicability of pars. (1) to (7) to visas, for provisions relating to applicability of pars. (1) to (8) to conditional entries.

Subsec. (d). Pub. L. 96-212, §203(c)(7), substituted “preference status under paragraphs (1) through (6)” for “preference status under paragraphs (1) through (7)”.

Subsec. (f). Pub. L. 96-212, §203(c)(8), struck out subsec. (f) which related to reports to Congress of refugees conditionally entering the United States.

Subsec. (g). Pub. L. 96-212, §203(c)(8), struck out subsec. (g) which set forth provisions respecting inspection and examination of refugees after one year.

Pub. L. 96-212, §203(i), substituted provisions relating to inspection and examination of refugees after one year for provisions relating to inspection and examination of refugees after two years.

Subsec. (h). Pub. L. 96-212, §203(c)(8), struck out subsec. (h) which related to the retroactive readjustment of refugee status as an alien lawfully admitted for permanent residence.

1978—Subsec. (a)(1) to (7). Pub. L. 95-412 substituted “1151(a) of this title” for “1151(a)(1) or (2) of this title” wherever appearing.

Subsec. (a)(8). Pub. L. 95-417 inserted provisions requiring a valid adoption home-study prior to the granting of a nonpreference visa for children adopted abroad or coming for adoption by United States citizens and requiring that no other nonpreference visa be issued to an unmarried child under the age of 16 unless accompanying or following to join his natural parents.

1976—Subsec. (a). Pub. L. 94-571, §4(1)–(3), substituted “section 1151(a)(1) or (2) of this title” for “section 1151(a)(ii) of this title” in pars. (1) to (7); made visas available, in par. (3), to qualified immigrants whose services in the professions, sciences, or arts are sought by an employer in the United States; and required, in par. (5), that the United States citizens be at least twenty-one years of age.

Subsec. (e). Pub. L. 94-571, §4(4), substituted provision requiring Secretary of State to terminate the registration of an alien who fails to apply for an immigrant visa within one year following notification of the availability of such visa, including provision for reinstatement of a registration upon establishment within two years following the notification that the failure to apply was due to circumstances beyond the alien’s control for prior provision for discretionary termination of the registration on a waiting list of an alien failing to evidence continued intention to apply for a visa as prescribed by regulation and inserted provision for automatic revocation of approval of a petition approved under section 1154(b) of this title upon such termination.

1965—Subsec. (a). Pub. L. 89-236 substituted provisions setting up preference priorities and percentage allocations of the total numerical limitation for the admission of qualified immigrants, consisting of unmarried sons or daughters of U.S. citizens (20 percent), husbands, wives, and unmarried sons or daughters of alien residents (20 percent plus any unused portion of class 1), members of professions, scientists, and artists (10 percent), married sons or daughters of U.S. citizens (10

percent plus any unused portions of classes 1-3), brothers or sisters of U.S. citizens (24 percent plus any unused portions of classes 1 through 4), skilled or unskilled persons capable of filling labor shortages in the United States (10 percent), refugees (6 percent), otherwise qualified immigrants (portion not used by classes 1 through 7), and allowing a spouse or child to be given the same status and order of consideration as the spouse or parent, for provisions spelling out the preferences under the quotas based on the previous national origins quota systems.

Subsec. (b). Pub. L. 89-236 substituted provisions requiring that consideration be given applications for immigrant visas in the order in which the classes of which they are members are listed in subsec. (a), for provisions allowing issuance of quota immigrant visas under the previous national origins quota system in the order of filing in the first calendar month after receipt of notice of approval for which a quota number was available.

Subsec. (c). Pub. L. 89-236 substituted provisions requiring issuance of immigrant visas pursuant to paragraphs (1) through (6) of subsection (a) of this section in the order of filing of the petitions therefor with the Attorney General, for provisions which related to issuance of quota immigrant visas in designated classes in the order of registration in each class on quota waiting lists.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring each immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the order for consideration of applications for quota immigrant visas under the various prior classes.

Subsec. (e). Pub. L. 89-236 substituted provisions authorizing Secretary of State to make estimates of anticipated members of visas issued and to terminate the waiting-list registration of any registrant failing to evidence a continued intention to apply for a visa, for provisions establishing a presumption of quota status for immigrants and requiring the immigrant to establish any claim to a preference.

Subsecs. (f) to (h). Pub. L. 89-236 added subsecs. (f) to (h).

1959—Subsec. (a)(2). Pub. L. 86-363, §1, accorded adult unmarried sons or daughters of United States citizens second preference in the allocation of immigrant visas within quotas.

Subsec. (a)(3). Pub. L. 86-363, §2, substituted “unmarried sons or daughters” for “children”.

Subsec. (a)(4). Pub. L. 86-363, §3, substituted “married sons or married daughters” for “sons, or daughters”, increased percentage limitation from 25 to 50 percent, and made preference available to spouses and children of qualified quota immigrants if accompanying them.

1957—Subsec. (a)(1). Pub. L. 85-316 substituted “or following to join him” for “him”.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-273, div. C, title I, §11036(c), Nov. 2, 2002, 116 Stat. 1847, provided that: “The amendments made by this section [amending this section and section 1186b of this title] shall take effect on the date of the enactment of this Act [Nov. 2, 2002] and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act:

“(1) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

“(2) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.”

Amendment by Pub. L. 107-208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107-208, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-536, §1(b)(2), Nov. 22, 2000, 114 Stat. 2561, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to visas made available in any fiscal year beginning on or after October 1, 2000."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 219(c) of Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENTS

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

Amendment by Pub. L. 102-110 effective 60 days after Oct. 1, 1991, see section 2(d) of Pub. L. 102-110, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 111, 121(a), 131, 162(a)(1) of Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, with general transition provisions, see section 161(a), (c) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(3) of Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 203(c) of Pub. L. 96-212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(i) of Pub. L. 96-212 effective immediately before Apr. 1, 1980, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

GAO STUDY

Pub. L. 108-156, §5, Dec. 3, 2003, 117 Stat. 1945, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 3, 2003], the Government Accountability Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

"(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

"(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

"(2) the country of origin of the immigrant investors;

"(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

"(4) the number of immigrant investors that have sought to become citizens of the United States;

"(5) the types of commercial enterprises that the immigrant investors have established; and

"(6) the types and number of jobs created by the immigrant investors."

RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS

Pub. L. 106-313, title I, §106(d), Oct. 17, 2000, 114 Stat. 1254, as amended by Pub. L. 109-13, div. B, title V, §502, May 11, 2005, 119 Stat. 322, provided that:

"(1) IN GENERAL.—Notwithstanding any other provision of law, the number of employment-based visas (as defined in paragraph (3)) made available for a fiscal year (beginning with fiscal year 2001) shall be increased by the number described in paragraph (2). Visas made available under this subsection shall only be available in a fiscal year to employment-based immigrants under paragraph (1), (2), or (3) of section 203(b) of the Immigration and Nationality Act [8 U.S.C. 1153(b)] and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants (and their family members accompanying or following to join under section 203(d) of such Act (8 U.S.C. 1153(d))) whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor.

"(2) NUMBER AVAILABLE.—

"(A) IN GENERAL.—Subject to subparagraph (B), the number described in this paragraph is the difference between the number of employment-based visas that were made available in fiscal years 1999 through 2004 and the number of such visas that were actually used in such fiscal years.

"(B)(i) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas actually used under paragraph (1) for previous fiscal years.

"(ii) MAXIMUM.—The total number of visas made available under paragraph (1) from unused visas from the fiscal years 2001 through 2004 may not exceed 50,000.

"(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the application of section 201(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(3)(C)).

"(3) EMPLOYMENT-BASED VISAS DEFINED.—For purposes of this subsection, the term 'employment-based visa' means an immigrant visa which is issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b))."

TEMPORARY REDUCTION IN WORKERS' VISAS

Pub. L. 105-100, title II, §203(e), Nov. 19, 1997, 111 Stat. 2199, as amended by Pub. L. 105-139, §1(e), Dec. 2, 1997, 111 Stat. 2645, provided that:

"(1) Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(3)(A)(iii)] for all aliens who are the beneficiary of a petition approved under section 204 of such Act [8 U.S.C. 1154] as of the date of the enactment of this Act [Nov. 19, 1997] for classification under section 203(b)(3)(A)(iii) of such Act, subject to paragraph (2), visas available under section 203(b)(3)(A)(iii) of that Act shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

"(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which—

“(A) the number computed under subsection (d)(2)(A) [section 203(d)(2)(A) of Pub. L. 105-100, 8 U.S.C. 1151 note]; exceeds

“(B) the total of the reductions in available visas under this subsection for all previous fiscal years.”

DIVERSITY IMMIGRANT LOTTERY FEE

Pub. L. 104-208, div. C, title VI, §636, Sept. 30, 1996, 110 Stat. 3009-703, provided that: “The Secretary of State may establish a fee to be paid by each applicant for an immigrant visa described in section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)]. Such fee may be set at a level that will ensure recovery of the cost to the Department of State of allocating visas under such section, including the cost of processing all applications thereunder. All fees collected under this section shall be used for providing consular services. All fees collected under this section shall be deposited as an offsetting collection to any Department of State appropriation and shall remain available for obligations until expended. The provisions of the Act of August 18, 1856 (11 Stat. 58; 22 U.S.C. 4212-4214), concerning accounting for consular fees, shall not apply to fees collected under this section.”

ELIGIBILITY FOR VISAS FOR POLISH APPLICANTS FOR 1995 DIVERSITY IMMIGRANT PROGRAM

Pub. L. 104-208, div. C, title VI, §637, Sept. 30, 1996, 110 Stat. 3009-704, provided that:

“(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, shall include among the aliens selected for diversity immigrant visas for fiscal year 1997 pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] any alien who, on or before September 30, 1995—

“(1) was selected as a diversity immigrant under such section for fiscal year 1995;

“(2) applied for adjustment of status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of such Act [8 U.S.C. 1255] during fiscal year 1995, and whose application, and any associated fees, were accepted by the Attorney General, in accordance with applicable regulations;

“(3) was not determined by the Attorney General to be excludable under section 212 of such Act [8 U.S.C. 1182] or ineligible under section 203(c)(2) of such Act [8 U.S.C. 1153(c)(2)]; and

“(4) did not become an alien lawfully admitted for permanent residence during fiscal year 1995.

“(b) PRIORITY.—The aliens selected under subsection (a) shall be considered to have been selected for diversity immigrant visas for fiscal year 1997 prior to any alien selected under any other provision of law.

“(c) REDUCTION OF IMMIGRANT VISA NUMBER.—For purposes of applying the numerical limitations in sections 201 and 203(c) of the Immigration and Nationality Act [8 U.S.C. 1151, 1153(c)], aliens selected under subsection (a) who are granted an immigrant visa shall be treated as aliens granted a visa under section 203(c) of such Act.”

SOVIET SCIENTISTS IMMIGRATION

Pub. L. 107-228, div. B, title XIII, §1304(d), Sept. 30, 2002, 116 Stat. 1437, provided that: “The Attorney General shall consult with the Secretary, the Secretary of Defense, the Secretary of Energy, and the heads of other appropriate agencies of the United States regarding—

“(1) previous experience in implementing the Soviet Scientists Immigration Act of 1992 [Pub. L. 102-509 set out below]; and

“(2) any changes that those officials would recommend in the regulations prescribed under that Act.”

[For definition of “Secretary” as used in section 1304(d) of Pub. L. 107-228, set out above, see section 3 of Pub. L. 107-228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.]

Pub. L. 102-509, Oct. 24, 1992, 106 Stat. 3316, as amended by Pub. L. 107-228, div. B, title XIII, §1304(a)-(c), Sept. 30, 2002, 116 Stat. 1436, 1437, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Soviet Scientists Immigration Act of 1992’.

“SEC. 2. DEFINITIONS.

“For purposes of this Act—

“(1) the term ‘Baltic states’ means the sovereign nations of Latvia, Lithuania, and Estonia;

“(2) the term ‘independent states of the former Soviet Union’ means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and

“(3) the term ‘eligible independent states and Baltic scientists’ means aliens—

“(A) who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

“(B) who are scientists or engineers who have expertise in nuclear, chemical, biological or other high technology fields or who are working on nuclear, chemical, biological or other high-technology defense projects, as defined by the Attorney General.

“SEC. 3. WAIVER OF JOB OFFER REQUIREMENT.

“The requirement in section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)) that an alien’s services in the sciences, arts, or business be sought by an employer in the United States shall not apply to any eligible independent states or Baltic scientist who is applying for admission to the United States for permanent residence in accordance with that section.

“SEC. 4. CLASSIFICATION OF INDEPENDENT STATES SCIENTISTS AS HAVING EXCEPTIONAL ABILITY.

“(a) IN GENERAL.—The Attorney General shall designate a class of eligible independent states and Baltic scientists, based on their level of expertise, as aliens who possess ‘exceptional ability in the sciences’, for purposes of section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)), whether or not such scientists possess advanced degrees. A scientist is not eligible for designation under this subsection if the scientist has previously been granted the status of an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

“(b) REGULATIONS.—The Attorney General shall prescribe regulations to carry out subsection (a).

“(c) LIMITATION.—Not more than 950 eligible independent states and Baltic scientists (excluding spouses and children if accompanying or following to join) within the class designated under subsection (a) may be allotted visas under section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)).

“(d) DURATION OF AUTHORITY.—The authority under subsection (a) shall be in effect during the following periods:

“(1) The period beginning on the date of the enactment of this Act [Oct. 24, 1992] and ending 4 years after such date.

“(2) The period beginning on the date of the enactment of the Security Assistance Act of 2002 [Sept. 30, 2002] and ending 4 years after such date.”

PILOT IMMIGRATION PROGRAM

Pub. L. 102-395, title VI, §610, Oct. 6, 1992, 106 Stat. 1874, as amended by Pub. L. 105-119, title I, §116(a), Nov. 26, 1997, 111 Stat. 2467; Pub. L. 106-396, §402, Oct. 30, 2000, 114 Stat. 1647; Pub. L. 107-273, div. C, title I, §11037(a), Nov. 2, 2002, 116 Stat. 1847; Pub. L. 108-156, §4, Dec. 3, 2003, 117 Stat. 1945, provided that:

“(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions

of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

“(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3,000 visas annually for 15 years to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)] and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], to accompany or follow to join such aliens.

“(c) In determining compliance with section 203(b)(5)(A)(iii)(ii) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)(A)(iii)(ii)], and notwithstanding the requirements of 8 CFR 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

“(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.”

[Pub. L. 107-273, div. C, title I, §11037(b), Nov. 2, 2002, 116 Stat. 1848, provided that: “The amendments made by this section [amending section 610 of Pub. L. 102-395, set out above] shall take effect on the date of the enactment of this Act [Nov. 2, 2002] and shall apply to—

“(1) any proposal for a regional center pending before the Attorney General (whether for an initial decision or on appeal) on or after the date of the enactment of this Act; and

“(2) any of the following petitions, if filed on or after the date of the enactment of this Act:

“(A) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

“(B) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.”]

[Section 116(b) of Pub. L. 105-119 provided that: “The amendment made by subsection (a)(2) [amending section 610 of Pub. L. 102-395, set out above] shall be deemed to have become effective on October 6, 1992.”]

TRANSITION FOR SPOUSES AND MINOR CHILDREN OF
LEGALIZED ALIENS

Section 112 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §302(b)(1), Dec. 12, 1991, 105 Stat. 1743, provided that:

“(a) ADDITIONAL VISA NUMBERS.—

“(1) IN GENERAL.—In addition to any immigrant visas otherwise available, immigrant visa numbers shall be available in each of fiscal years 1992, 1993, and 1994 for spouses and children of eligible, legalized aliens (as defined in subsection (c)) in a number equal to 55,000 minus the number (if any) computed under paragraph (2) for the fiscal year.

“(2) OFFSET.—The number computed under this paragraph for a fiscal year is the number (if any) by which—

“(A) the sum of the number of aliens described in subparagraphs (A) and (B) of section 201(b)(2) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)] (or, for fiscal year 1992, section 201(b) of such Act) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year, exceeds

“(B) 239,000.

“(b) ORDER.—Visa numbers under this section shall be made available in the order in which a petition, in behalf of each such immigrant for classification under section 203(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2)], is filed with the Attorney General under section 204 of such Act [8 U.S.C. 1154].

“(c) LEGALIZED ALIEN DEFINED.—In this section, the term ‘legalized alien’ means an alien lawfully admitted for permanent residence who was provided—

“(1) temporary or permanent residence status under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160],

“(2) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], or

“(3) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99-603, set out as a note under section 1255a of this title].

“(d) DEFINITIONS.—The definitions in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.”

TRANSITION FOR EMPLOYEES OF CERTAIN UNITED
STATES BUSINESSES OPERATING IN HONG KONG

Section 124 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §302(b)(5), Dec. 12, 1991, 105 Stat. 1743, provided that:

“(a) ADDITIONAL VISA NUMBERS.—

“(1) TREATMENT OF PRINCIPALS.—In the case of any alien described in paragraph (3) (or paragraph (2) as the spouse or child of such an alien) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991 through 1993 and without regard to section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)], up to 12,000 additional immigrant visas. If the full number of such visas are not made available in fiscal year 1991 or 1992, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

“(2) DERIVATIVE RELATIVES.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, the alien’s spouse or parent.

“(3) EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.—An alien is described in this paragraph if the alien—

“(A) is a resident of Hong Kong and is employed in Hong Kong except for temporary absences at the request of the employer and has been employed in Hong Kong for at least 12 consecutive months as an officer or supervisor or in a capacity that is mana-

gerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least \$50,000,000, and

“(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

“(b) PETITIONS.—Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

“(c) ALLOCATION.—Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

“(d) DEFINITIONS.—In this section:

“(1) EXECUTIVE CAPACITY.—The term ‘executive capacity’ has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(44)(B)], as added by section 123 of this Act.

“(2) MANAGERIAL CAPACITY.—The term ‘managerial capacity’ has the meaning given such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as added by section 123 of this Act.

“(3) OFFICER.—The term ‘officer’ means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

“(4) SPECIALIZED KNOWLEDGE.—The term ‘specialized knowledge’ has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act [8 U.S.C. 1184(c)(2)(B)], as amended by section 206(b)(2) of this Act.

“(5) SUPERVISOR.—The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.”

[Section 124 of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

DIVERSITY TRANSITION FOR ALIENS WHO ARE NATIVES OF CERTAIN ADVERSELY AFFECTED FOREIGN STATES

Section 217(b) of Pub. L. 103-416 provided that:

“(1) ELIGIBILITY.—For the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a) [amending section 132 of Pub. L. 101-649, set out below], applications for natives of diversity transition countries submitted for

fiscal year 1995 for diversity immigrants under section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] shall be considered applications for visas made available for fiscal year 1995 for the diversity transition program under section 132 of the Immigration Act of 1990 [section 132 of Pub. L. 101-649]. No application period for the fiscal year 1995 diversity transition program shall be established and no new applications may be accepted for visas made available under such program for fiscal year 1995. Applications for visas in excess of the minimum available to natives of the country specified in section 132(c) of the Immigration Act of 1990 shall be selected for qualified applicants within the several regions defined in section 203(c)(1)(F) of the Immigration and Nationality Act in proportion to the region’s share of visas issued in the diversity transition program during fiscal years 1992 and 1993.

“(2) NOTIFICATION.—Not later than 180 days after the date of enactment of this Act [Oct. 25, 1994], notification of the extension of the diversity transition program for fiscal year 1995 and the provision of visa numbers shall be made to each eligible applicant under paragraph (1).

“(3) REQUIREMENTS.—Notwithstanding any other provision of law, for the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), the requirement of section 132(b)(2) of the Immigration Act of 1990 shall not apply to applicants under such extension and the requirement of section 203(c)(2) of the Immigration and Nationality Act shall apply to such applicants.”

Section 132 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §302(b)(6), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 103-416, title II, §217(a), Oct. 25, 1994, 108 Stat. 4315, provided that:

“(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152], there shall be made available to qualified immigrants described in subsection (b) (or in subsection (d) as the spouse or child of such an alien) 40,000 immigrant visas in each of fiscal years 1992, 1993, and 1994 and in fiscal year 1995 a number of immigrant visas equal to the number of such visas provided (but not made available) under this section in previous fiscal years. If the full number of such visas are not made available in fiscal year 1992 or 1993, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

“(b) QUALIFIED ALIEN DESCRIBED.—An alien described in this subsection is an alien who—

“(1) is a native of a foreign state that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99-603, set out below],

“(2) has a firm commitment for employment in the United States for a period of at least 1 year (beginning on the date of admission under this section), and

“(3) except as provided in subsection (c), is admissible as an immigrant.

“(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available strictly in a random order among those who qualify during the application period for each fiscal year established by the Secretary of State, except that at least 40 percent of the number of such visas in each fiscal year shall be made available to natives of the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act [of 1986] (or to aliens described in subsection (d) who are the spouses or children of such natives) and except that if more than one application is submitted for any fiscal year (beginning with fiscal year 1993) with respect to any alien all such applications submitted with respect to the alien and fiscal year shall be voided. If the minimum number of such visas are not made available in fiscal year 1992, 1993, or 1994 to such natives, the shortfall shall be added to the number of such visas to be made available under this section to

such natives in the succeeding fiscal year. In applying this section, natives of Northern Ireland shall be deemed to be natives of Ireland.

“(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

“(e) WAIVERS OF GROUNDS OF EXCLUSION.—In determining the admissibility of an alien provided a visa number under this section, the Attorney General shall waive the ground of exclusion specified in paragraph (6)(C) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)], unless the Attorney General finds that such a waiver is not in the national interest. In addition, the provisions of section 212(e) of such Act shall not apply so as to prevent an individual’s application for a visa or admission under this section.

“(f) APPLICATION FEE.—The Secretary of State shall require payment of a reasonable fee for the filing of an application under this section in order to cover the costs of processing applications under this section.”

[Section 302(b)(6)(C) of Pub. L. 102-232 provided that the amendment made by that section to section 132(b)(1) of Pub. L. 101-649, set out above, is effective after fiscal year 1992.]

[Section 302(b)(6)(D)(i) of Pub. L. 102-232 provided that the amendment made by that section to section 132(c) of Pub. L. 101-649, set out above, is effective beginning with fiscal year 1993.]

ONE-YEAR DIVERSITY TRANSITION FOR ALIENS WHO HAVE BEEN NOTIFIED OF AVAILABILITY OF NP-5 VISAS

Section 133 of Pub. L. 101-649 provided that, notwithstanding numerical limitations in sections 1151 and 1152 of this title, there were to be made available in fiscal year 1991, immigrant visa numbers for qualified immigrants who were notified by Secretary of State before May 1, 1990, of their selection for issuance of visa under section 314 of Pub. L. 99-603, formerly set out as a note below, and were qualified for issuance of such visa but for numerical and fiscal year limitations on issuance of such visas, former section 1182(a)(19) of this title or section 1182(e) of this title, or fact that immigrant was a national, but not a native, of foreign state described in section 314 of Pub. L. 99-603.

TRANSITION FOR DISPLACED TIBETANS

Section 134 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §302(b)(7), Dec. 12, 1991, 105 Stat. 1744, provided that, notwithstanding numerical limitations in sections 1151 and 1152 of this title, there were to be made available to qualified displaced Tibetans who were natives of Tibet and had been continuously residing in India or Nepal since Nov. 29, 1990, 1,000 immigrant visas in the 3-fiscal-year period beginning with fiscal year 1991.

EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS

Section 155 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §302(d)(5), Dec. 12, 1991, 105 Stat. 1745, provided that:

“(a) IN GENERAL.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) (or section 203(e), in the case of fiscal year 1992) of the Immigration and Nationality Act [8 U.S.C. 1153(c), (e)] (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

“(b) LEBANESE IMMIGRANTS COVERED.—Lebanese immigrants described in this subsection are aliens who—

“(1) are natives of Lebanon,

“(2) are not firmly resettled in any foreign country outside Lebanon, and

“(3) as of the date of the enactment of this Act [Nov. 29, 1990], are the beneficiaries of a petition approved to accord status under section 203(a)(2) or 203(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2), (5)] (as in effect as of the date of the enactment of this Act),

or who are the spouse or child of such an alien if accompanying or following to join the alien.”

[Section 155 of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

ORDER OF CONSIDERATION

Section 162(a)(2) of Pub. L. 101-649 provided that: “Nothing in this Act [see Tables for classification] may be construed as continuing the availability of visas under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], as in effect before the date of enactment of this Act [Nov. 29, 1990].”

MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION

Pub. L. 100-658, §3, Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, but subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants who were natives of underrepresented countries, 10,000 visa numbers in each of fiscal years 1990 and 1991.

MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS

Pub. L. 99-603, title III, §314, Nov. 6, 1986, 100 Stat. 3439, as amended by Pub. L. 100-658, §2(a), Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, but subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants described in section 1153(a)(7) of this title, 5,000 visa numbers in each of fiscal years 1987 and 1988 and 15,000 visa numbers in each of fiscal years 1989 and 1990.

REFERENCES TO CONDITIONAL ENTRY REQUIREMENTS OF SUBSECTION (a)(7) OF THIS SECTION IN OTHER FEDERAL LAWS

Section 203(h) of Pub. L. 96-212 provided that: “Any reference in any law (other than the Immigration and Nationality Act [this chapter] or this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title]) in effect on April 1, 1980, to section 203(a)(7) of the Immigration and Nationality Act [subsec. (a)(7) of this section] shall be deemed to be a reference to such section as in effect before such date and to sections 207 and 208 of the Immigration and Nationality Act [sections 1157 and 1158 of this title].”

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

For adjustment of the status of refugees paroled into the United States pursuant to section 1182(d)(5) of this title, see section 5 of Pub. L. 95-412, set out as a note under section 1182 of this title.

ENTITLEMENT TO PREFERENTIAL STATUS

Section 9 of Pub. L. 94-571 provided that:

“(a) The amendments made by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title] shall not operate to effect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section] as

in effect on the day before the effective date of this Act [see Effective Date of 1976 Amendment note set out under section 1101 of this title], on the basis of a petition filed with the Attorney General prior to such effective date.

“(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note under section 1101 of this title] shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act [subsec. (a)(8) of this section] and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section], as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) [subsec. (a) of this section] shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title], as amended by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title].”

NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JANUARY 1, 1962

Pub. L. 87-885, §1, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be non-quota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100-525, §8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962

Pub. L. 87-885, §2, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued non-quota immigrant visas, was repealed by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100-525, §8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS

Pub. L. 87-301, §25, Sept. 26, 1961, 75 Stat. 657, as amended by Pub. L. 99-653, §11, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100-525, §8(j)(2), Oct. 24, 1988, 102 Stat. 2617, provided that: “At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act [Sept. 26, 1961] a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September

11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.”

[Section 23(c) of Pub. L. 99-653, as added by Pub. L. 100-525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: “The amendments made by section 11 [amending section 25 of Pub. L. 87-301 set out above and repealing sections 1 and 2 of Pub. L. 87-885] take effect on November 14, 1986.”]

ADOPTED SONS OR ADOPTED DAUGHTERS, PREFERENCE STATUS

Section 5(c) of Pub. L. 86-363 provided that aliens granted a preference pursuant to petitions approved by the Attorney General on the ground that they were the adopted sons or adopted daughters of United States citizens were to remain in that status notwithstanding the provisions of section 1 of Pub. L. 86-363, unless they acquired a different immigrant status pursuant to a petition approved by the Attorney General.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1958

Section 12A of Pub. L. 85-316, as added by section 2 of Pub. L. 85-700, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87-301, §24(a)(6), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12A of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1957

Section 12 of Pub. L. 85-316 providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, shall be held to be non-quota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87-301, §24(a)(5), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12 of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

SPECIAL NONQUOTA IMMIGRANT VISAS FOR REFUGEES

Section 6 of Pub. L. 86-363 authorizing issuance of nonquota immigrant visas to aliens eligible to enter for permanent residence if the alien was the beneficiary of a visa petition approved by the Attorney General, and such petition was filed by a person admitted under former section 1971 et seq., of Title 50, Appendix, was repealed by Pub. L. 87-301, §24(a)(7), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 6 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

NONQUOTA IMMIGRANT STATUS OF SPOUSES AND CHILDREN OF CERTAIN ALIENS

Section 4 of Pub. L. 86-363 providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87-301, §24(a)(7), Sept. 26, 1961.

Repeal of section 4 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

§ 1154. Procedure for granting immigrant status**(a) Petitioning procedure**

(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 1153(a) of this title or to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 1151(b)(2)(A)(i) of this title also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status re-

lated to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a citizen who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (iii) or (iv),

shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

(vi) For the purposes of any petition filed under clause (iii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser's citizenship status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 1255 of this title or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.

(vii) An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 1151(b)(2)(A)(i) of this title if the alien—

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title;

(IV) resides, or has resided, with the citizen daughter or son; and

(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

(viii)(I) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(II) For purposes of subclause (I), the term “specified offense against a minor” is defined as in section 16911 of title 42.

(B)(i)(I) Except as provided in subclause (II), any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 1153(a)(2) of this title may file a petition with the Attorney General for such classification.

(I)¹ Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary’s sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

(ii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 1153(a)(2)(A) of this title and if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien—

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 1153(a)(2)(A) of this title or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

(dd) who has resided with the alien’s spouse or intended spouse.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who resides, or has resided in the past, with the alien’s permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s permanent resident parent.

(iv) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10); or

(cc) has subjected the alien or the alien’s child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (ii) or (iii),

shall file such petition with the Attorney General under the procedures that apply to self-petitions under clause (ii) or (iii), as applicable.

(v)(I) For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien’s ability to adjust status under subsections (a) and (c) of section 1255 of this title or obtain status as a lawful permanent resident based on an approved self-petition under clause (ii) or (iii).

(II) Upon the lawful permanent resident spouse or parent becoming or establishing the existence of United States citizenship through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii) or (iii) on behalf of an alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.

(C) Notwithstanding section 1101(f) of this title, an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner’s admissibility under section 1182(a) of this title or deportability under section 1227(a) of this title shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

¹ So in original. Probably should be “(II)”.

(D)(i)(I) Any child who attains 21 years of age who has filed a petition under clause (iv) of subsection (a)(1)(A) of this section or subsection (a)(1)(B)(iii) of this section that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 1153(a) of this title, whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of subsection (a)(1)(A) of this section or subsection (a)(1)(B)(iii) of this section. No new petition shall be required to be filed.

(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

(IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.

(iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.

(iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsections (a) and (c) of section 1255 of this title as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).

(v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through (iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual filing a petition under subparagraph (A)(iv) or (B)(iii).

(E) Any alien desiring to be classified under section 1153(b)(1)(A) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(F) Any employer desiring and intending to employ within the United States an alien enti-

pled to classification under section 1153(b)(1)(B), 1153(b)(1)(C), 1153(b)(2), or 1153(b)(3) of this title may file a petition with the Attorney General for such classification.

(G)(i) Any alien (other than a special immigrant under section 1101(a)(27)(D) of this title) desiring to be classified under section 1153(b)(4) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 1101(a)(27)(D) of this title may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(H) Any alien desiring to be classified under section 1153(b)(5) of this title may file a petition with the Attorney General for such classification.

(I)(i) Any alien desiring to be provided an immigrant visa under section 1153(c) of this title may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 1153(c) of this title for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(J) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(K) Upon the approval of a petition as a VAWA self-petitioner, the alien—

(i) is eligible for work authorization; and

(ii) may be provided an “employment authorized” endorsement or appropriate work permit incidental to such approval.

(L) Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a non-immigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title may not file a petition for classification under this section or section 1184 of this title to classify any person who committed the battery or extreme cruelty or

trafficking against the individual (or the individual's child) which established the individual's (or individual's child²) eligibility as a VAWA petitioner or for such nonimmigrant status.

(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term "spousal second preference petition" refers to a petition, seeking preference status under section 1153(a)(2) of this title, for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

(b) Investigation; consultation; approval; authorization to grant preference status

After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 1153(b)(2) or 1153(b)(3) of this title, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 1151(b) of this title, or is eligible for preference under subsection (a) or (b) of section 1153 of this title, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud

Notwithstanding the provisions of subsection (b) of this section no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that

the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

(d) Recommendation of valid home-study

Notwithstanding the provisions of subsections (a) and (b) of this section no petition may be approved on behalf of a child defined in section 1101(b)(1)(F) of this title unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

(e) Subsequent finding of non-entitlement to preference classification

Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted³ the United States as an immigrant under subsection (a), (b), or (c) of section 1153 of this title or as an immediate relative under section 1151(b) of this title if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

(f) Preferential treatment for children fathered by United States citizens and born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982

(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 1151(b), 1153(a)(1), or 1153(a)(3) of this title, as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition for an alien under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982, and (ii) was fathered by a United States citizen;

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien's placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and (C)(ii) of paragraph (2); and

²So in original. Probably should be "child's".

³So in original. Probably should be followed by "to".

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) A guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must—

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the “sponsor”) who is twenty-one years of age or older, is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to assume legal custody for the alien after the alien’s departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 9902(2) of title 42 and as revised by the Secretary of Health and Human Services under the second and third sentences of such section) for a family of the same size as the size of the alien’s family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under title 11.

(g) Restriction on petitions based on marriages entered while in exclusion or deportation proceedings

Notwithstanding subsection (a) of this section, except as provided in section 1255(e)(3) of this title, a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 1255(e)(2) of this title, until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

(h) Survival of rights to petition

The legal termination of a marriage may not be the sole basis for revocation under section

1155 of this title of a petition filed under subsection (a)(1)(A)(iii) of this section or a petition filed under subsection (a)(1)(B)(ii) of this section pursuant to conditions described in subsection (a)(1)(A)(iii)(I) of this section. Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) of this section or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) of this section or in subsection (a)(1)(B)(iii) of this section shall not be the basis for revocation of a petition approval under section 1155 of this title.

(i) Professional athletes

(1) In general

A petition under subsection (a)(4)(D)⁴ of this section for classification of a professional athlete shall remain valid for the athlete after the athlete changes employers, if the new employer is a team in the same sport as the team which was the employer who filed the petition.

(2) “Professional athlete” defined

For purposes of paragraph (1), the term “professional athlete” means an individual who is employed as an athlete by—

(A) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(B) any minor league team that is affiliated with such an association.

(j) Job flexibility for long delayed applicants for adjustment of status to permanent residence

A petition under subsection (a)(1)(D) of this section for an individual whose application for adjustment of status pursuant to section 1255 of this title has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

(k) Procedures for unmarried sons and daughters of citizens

(1) In general

Except as provided in paragraph (2), in the case of a petition under this section initially filed for an alien unmarried son or daughter’s classification as a family-sponsored immigrant under section 1153(a)(2)(B) of this title, based on a parent of the son or daughter being an alien lawfully admitted for permanent residence, if such parent subsequently becomes a naturalized citizen of the United States, such petition shall be converted to a petition to classify the unmarried son or daughter as a family-sponsored immigrant under section 1153(a)(1) of this title.

(2) Exception

Paragraph (1) does not apply if the son or daughter files with the Attorney General a written statement that he or she elects not to have such conversion occur (or if it has oc-

⁴So in original. Probably should be subsection “(a)(1)(D)”.

curred, to have such conversion revoked). Where such an election has been made, any determination with respect to the son or daughter's eligibility for admission as a family-sponsored immigrant shall be made as if such naturalization had not taken place.

(3) Priority date

Regardless of whether a petition is converted under this subsection or not, if an unmarried son or daughter described in this subsection was assigned a priority date with respect to such petition before such naturalization, he or she may maintain that priority date.

(4) Clarification

This subsection shall apply to a petition if it is properly filed, regardless of whether it was approved or not before such naturalization.

(June 27, 1952, ch. 477, title II, ch. 1, § 204, 66 Stat. 179; Pub. L. 87-885, § 3, Oct. 24, 1962, 76 Stat. 1247; Pub. L. 89-236, § 4, Oct. 3, 1965, 79 Stat. 915; Pub. L. 94-571, § 7(b), Oct. 20, 1976, 90 Stat. 2706; Pub. L. 95-417, §§ 2, 3, Oct. 5, 1978, 92 Stat. 917; Pub. L. 96-470, title II, § 207, Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-116, §§ 3, 18(d), Dec. 29, 1981, 95 Stat. 1611, 1620; Pub. L. 97-359, Oct. 22, 1982, 96 Stat. 1716; Pub. L. 99-639, §§ 2(c), 4(a), 5(b), Nov. 10, 1986, 100 Stat. 3541, 3543; Pub. L. 100-525, § 9(g), Oct. 24, 1988, 102 Stat. 2620; Pub. L. 101-649, title I, § 162(b), title VII, § 702(b), Nov. 29, 1990, 104 Stat. 5010, 5086; Pub. L. 102-232, title III, §§ 302(e)(4), (5), 308(b), 309(b)(5), Dec. 12, 1991, 105 Stat. 1745, 1746, 1757, 1758; Pub. L. 103-322, title IV, § 40701(a), (b)(1), (c), Sept. 13, 1994, 108 Stat. 1953, 1954; Pub. L. 103-416, title II, § 219(b)(2), Oct. 25, 1994, 108 Stat. 4316; Pub. L. 104-208, div. C, title III, § 308(e)(1)(A), (f)(2)(A), title VI, § 624(b), Sept. 30, 1996, 110 Stat. 3009-619, 3009-621, 3009-699; Pub. L. 106-279, title III, § 302(b), Oct. 6, 2000, 114 Stat. 839; Pub. L. 106-313, title I, § 106(c)(1), Oct. 17, 2000, 114 Stat. 1254; Pub. L. 106-386, div. B, title V, §§ 1503(b)-(d), 1507(a)(1), (2), (b), Oct. 28, 2000, 114 Stat. 1518-1521, 1529, 1530; Pub. L. 107-208, §§ 6, 7, Aug. 6, 2002, 116 Stat. 929; Pub. L. 109-162, title VIII, §§ 805(a),(c), 814(b),(e), 816, Jan. 5, 2006, 119 Stat. 3056, 3059, 3060; Pub. L. 109-248, title IV, § 402(a), July 27, 2006, 120 Stat. 622; Pub. L. 109-271, § 6(a), Aug. 12, 2006, 120 Stat. 762.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 106-279, title III, §§ 302(b), 505(a)(2), (b), Oct. 6, 2000, 114 Stat. 839, 844, provided that, effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, subsection (d) of this section is amended by striking "(d)" and inserting "(d)(1)", by striking "section 1101(b)(1)(F)" and inserting "subparagraph (F) or (G) of section 1101(b)(1)", and by adding at the end the following new paragraph:

(2) Notwithstanding the provisions of subsections (a) and (b) of this section, no petition may be approved on behalf of a child defined in section 1101(b)(1)(G) of this title unless the Secretary of State has certified that the central authority of the

child's country of origin has notified the United States central authority under the convention referred to in such section 1101(b)(1)(G) of this title that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000 [42 U.S.C. 14901 et seq.].

REFERENCES IN TEXT

The Child Status Protection Act, referred to in subsection (a)(1)(D)(iii), is Pub. L. 107-208, Aug. 6, 2002, 116 Stat. 927, which amended this section and sections 1151, 1153, 1157, and 1158 of this title and enacted provisions set out as notes under sections 1101 and 1151 of this title. For complete classification of this Act to the Code, see Short Title of 2002 Amendments note set out under section 1101 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1)(A)(i). Pub. L. 109-248, § 402(a)(1), substituted "Except as provided in clause (viii), any" for "Any".

Subsec. (a)(1)(A)(vii). Pub. L. 109-162, § 816, added cl. (vii).

Subsec. (a)(1)(A)(viii). Pub. L. 109-248, § 402(a)(2), added cl. (viii).

Subsec. (a)(1)(B)(i). Pub. L. 109-248, § 402(a)(3), redesignated cl. (i) as first subcl. (I), substituted "Except as provided in subclause (II), any alien" for "Any alien", and added a second subcl. (I).

Subsec. (a)(1)(D)(v). Pub. L. 109-271, which directed insertion of "or (B)(iii)" after "(A)(iv)", was executed by making the insertion after "(A)(iv)" both places it appeared, to reflect the probable intent of Congress.

Pub. L. 109-162, § 805(c)(1), added cl. (v).

Subsec. (a)(1)(D)(i)(I). Pub. L. 109-162, § 805(a)(1)(A), inserted "or subsection (a)(1)(B)(iii) of this section" after "subsection (a)(1)(A) of this section" in two places.

Subsec. (a)(1)(D)(i)(III). Pub. L. 109-162, § 805(a)(1)(B), substituted "a VAWA self-petitioner" for "a petitioner for preference status under paragraph (1), (2), or (3) of section 1153(a) of this title, whichever paragraph is applicable."

Subsec. (a)(1)(D)(iv). Pub. L. 109-162, § 805(a)(2), added cl. (iv).

Subsec. (a)(1)(K). Pub. L. 109-162, § 814(b), added subpar. (K).

Subsec. (a)(1)(L). Pub. L. 109-162, § 814(e), added subpar. (L).

2002—Subsec. (a)(1)(D)(iii). Pub. L. 107-208, § 7, added cl. (iii).

Subsec. (k). Pub. L. 107-208, § 6, added subsec. (k).

2000—Subsec. (a)(1)(A)(iii). Pub. L. 106-386, § 1503(b)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who has resided in the United States with the alien's spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that—

"(I) the alien is residing in the United States, the marriage between the alien and the spouse was entered into in good faith by the alien, and during the marriage the alien or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse; and

"(II) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien."

Subsec. (a)(1)(A)(iv). Pub. L. 106-386, § 1503(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv)

read as follows: “An alien who is the child of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who has resided in the United States with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

“(I) the alien is residing in the United States and during the period of residence with the citizen parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s citizen parent; and

“(II) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien.”

Subsec. (a)(1)(A)(v). Pub. L. 106-386, §1503(b)(3), added cl. (v).

Subsec. (a)(1)(A)(vi). Pub. L. 106-386, §1507(a)(1), added cl. (vi).

Subsec. (a)(1)(B)(ii). Pub. L. 106-386, §1503(c)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “An alien who is the spouse of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who has resided in the United States with the alien’s legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iii)) under such section if the alien demonstrates to the Attorney General that the conditions described in subclauses (I) and (II) of subparagraph (A)(iii) are met with respect to the alien.”

Subsec. (a)(1)(B)(iii). Pub. L. 106-386, §1503(c)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “An alien who is the child of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who has resided in the United States with the alien’s permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

“(I) the alien is residing in the United States and during the period of residence with the permanent resident parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s permanent resident parent; and

“(II) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien.”

Subsec. (a)(1)(B)(iv). Pub. L. 106-386, §1503(c)(3), added cl. (iv).

Subsec. (a)(1)(B)(v). Pub. L. 106-386, §1507(a)(2), added cl. (v).

Subsec. (a)(1)(C) to (I). Pub. L. 106-386, §1503(d)(1), (2), added subpars. (C) and (D) and redesignated former subpars. (C) to (G) as (E) to (I), respectively. Former subpar. (H) redesignated (J).

Subsec. (a)(1)(J). Pub. L. 106-386, §1503(d)(1), (3), redesignated subpar. (H) as (J) and inserted “or in making determinations under subparagraphs (C) and (D),” after “subparagraph (B),”.

Subsec. (h). Pub. L. 106-386, §1507(b), inserted at end “Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) of this section or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) of this section or in subsection (a)(1)(B)(iii) of this section shall not be the basis for revocation of a petition approval under section 1155 of this title.”

Subsec. (j). Pub. L. 106-313 added subsec. (j).

1996—Subsec. (a)(1)(A)(iii)(II), (iv)(II), (B)(iii)(II). Pub. L. 104-208, §308(e)(1)(A), substituted “removal” for “deportation”.

Subsec. (e). Pub. L. 104-208, §308(f)(2)(A), substituted “be admitted” for “enter”.

Subsec. (i). Pub. L. 104-208, §624(b), added subsec. (i). 1994—Subsec. (a)(1). Pub. L. 103-322, §40701(a), in subpar. (A), designated first sentence as cl. (i) and second sentence as cl. (ii) and added cls. (iii) and (iv), in subpar. (B), designated existing provisions as cl. (i) and added cls. (ii) and (iii), and added subpar. (H).

Subsec. (a)(1)(A). Pub. L. 103-416 in second sentence inserted “spouse” after “alien” and “of the alien (and the alien’s children)” after “for classification”.

Subsec. (a)(2). Pub. L. 103-322, §40701(b)(1), in subpar. (A), substituted “for the classification of the spouse of an alien if the alien,” for “filed by an alien who,” in introductory provisions and in subpar. (B), substituted “for the classification of the spouse of an alien if the prior marriage of the alien” for “by an alien whose prior marriage”.

Subsec. (h). Pub. L. 103-322, §40701(c), added subsec. (h).

1991—Subsec. (a)(1)(A). Pub. L. 102-232, §302(e)(4)(A), inserted sentence at end authorizing filing of petitions by aliens described in second sentence of section 1151(b)(2)(A)(i) of this title.

Subsec. (a)(1)(F). Pub. L. 102-232, §302(e)(4)(B), substituted “Attorney General” for “Secretary of State”.

Subsec. (a)(1)(G)(iii). Pub. L. 102-232, §302(e)(4)(C), struck out “or registration” after “petition”.

Subsec. (e). Pub. L. 102-232, §302(e)(5), substituted “as an immigrant” for “as a immigrant”.

Subsec. (f)(4)(A)(ii)(II). Pub. L. 102-232, §309(b)(5), substituted “the second and third sentences of such section” for “section 9847 of title 42”.

Subsec. (g). Pub. L. 102-232, §308(b), made technical correction to directory language of Pub. L. 101-649, §702(b). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101-649, §162(b)(1), added par. (1) and struck out former par. (1) which read as follows: “Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 1153(a) of this title, or to an immediate relative status under section 1151(b) of this title, or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 1153(a)(2) of this title, or any alien desiring to be classified as a preference immigrant under section 1153(a)(3) of this title (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 1153(a)(6) of this title, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.”

Subsec. (b). Pub. L. 101-649, §162(b)(2), substituted reference to section 1153(b)(2) or 1153(b)(3) of this title for reference to section 1153(a)(3) or (6) of this title, and reference to preference under section 1153(a) or (b) of this title for reference to a preference status under section 1153(a) of this title.

Subsec. (e). Pub. L. 101-649, §162(b)(3), substituted “immigrant under subsection (a), (b), or (c) of section 1153 of this title” for “preference immigrant under section 1153(a) of this title”.

Subsec. (f). Pub. L. 101-649, §162(b)(5), (6), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to applicability of provisions to qualified immigrants specified in section 1152(e) of this title.

Subsec. (f)(1). Pub. L. 101-649, §162(b)(4), substituted reference to section 1153(a)(3) of this title for reference to section 1153(a)(4) of this title.

Subsec. (g). Pub. L. 101-649, §702(b), as amended by Pub. L. 102-232, §308(b), inserted “except as provided in

section 1255(e)(3) of this title,” after “Notwithstanding subsection (a) of this section.”

Pub. L. 101-649, §162(b)(6), redesignated subsec. (h) as (g). Former subsec. (g) redesignated as (f).

Subsec. (h). Pub. L. 101-649, §162(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (c). Pub. L. 100-525, §9(g)(1), substituted “an immediate relative” for “a nonquota”.

Subsec. (g)(3)(A). Pub. L. 100-525, §9(g)(2), substituted “(C)(ii) of paragraph (2)” for “(C)(i) of paragraph 2”.

1986—Subsec. (a). Pub. L. 99-639, §2(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99-639, §4(a), inserted “(1)” after “if” and “, or has sought to be accorded,” and added cl. (2).

Subsec. (h). Pub. L. 99-639, §5(b), added subsec. (h).

1982—Subsec. (g). Pub. L. 97-359 added subsec. (g).

1981—Subsec. (a). Pub. L. 97-116, §18(d), substituted “of a relationship described in paragraph” for “of the relationships described in paragraphs”.

Subsec. (d). Pub. L. 97-116, §3, redesignated subsec. (e) as (d). Former subsec. (d), directing that the Attorney General forward to the Congress a Statistical summary of petitions for immigrant status approved by him under section 1153(a)(3) or 1153(a)(6) of this title and that the reports be submitted to Congress on the first and fifteenth day of each calendar month in which Congress was in session, was struck out.

Subsecs. (e), (f). Pub. L. 97-116, §3, redesignated as subsec. (e) the subsec. (f) relating to subsequent finding of non-entitlement. See 1978 Amendment note below. Former subsec. (e) redesignated (d).

1980—Subsec. (d). Pub. L. 96-470 substituted provision requiring the Attorney General to forward to Congress a statistical summary of approved petitions for professional or occupational preferences for provision requiring the Attorney General to forward to Congress a report on each petition approved for professional or occupational preference stating the basis for his approval and the facts pertinent in establishing qualifications for preferential status.

1978—Subsec. (c). Pub. L. 95-417, §2, struck out “no more than two petitions may be approved for one petitioner on behalf of a child as defined in section 1101(b)(1)(E) or 1101(b)(1)(F) of this title unless necessary to prevent the separation of brothers and sisters and” after “subsection (b) of this section”.

Subsecs. (e), (f). Pub. L. 95-417, §3, added subsec. (e) and redesignated former subsec. (e), relating to subsequent finding of non-entitlement, as subsec. (f) without regard to existing subsec. (f), relating to provisions applicable to qualified immigrants, added by Pub. L. 94-571.

1976—Subsec. (f). Pub. L. 94-571 added subsec. (f).

1965—Subsec. (a). Pub. L. 89-236 substituted provisions spelling out the statutory grounds for filing a petition for preference status and prescribing the authority of the Attorney General to require documentary evidence in support and the form of the petition, for provisions prohibiting consular officers from granting preference status before being authorized to do so in cases of applications based on membership in the ministry of a religious denomination or high education, technical training, or specialized experience which would be substantially beneficial to the United States.

Subsec. (b). Pub. L. 89-236 substituted provisions authorizing investigation of petitions by the Attorney General, consultation with the Secretary of Labor, and authorization to consular officers, for provisions specifying the form of application for preference status on the basis of membership in the ministry of a religious denomination or high education, technical training, or specialized experience which would be substantially beneficial to the United States and the circumstances making an application appropriate.

Subsec. (c). Pub. L. 89-236 substituted provisions limiting the number of orphan petitions which may be approved for one petitioner and prohibiting approval of any petition of an alien whose prior marriage was determined by the Attorney General to have been entered

into for the purpose of evading the immigration laws, for provisions which related to investigation of facts by the Attorney General and submission of reports to Congress covering the granting of preferential status.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring the Attorney General to submit reports to Congress on each approved petition for professional or occupational preference, for provisions prohibiting a statutory construction of the section which would entitle an immigrant to preferential classification if, upon arrival at the port of entry, he was found not to be entitled to such classification.

Subsec. (e). Pub. L. 89-236 added subsec. (e).

1962—Subsec. (c). Pub. L. 87-885 provided for submission of reports to Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107-208, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-279 effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(1)(A), (f)(2)(A) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

Amendment by Pub. L. 103-322 effective Jan. 1, 1995, see section 40701(d) of Pub. L. 103-322, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 302(e)(4), (5) and 308(b) of Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 162(b) of Pub. L. 101-649 effective Nov. 29, 1990, but only insofar as section 162(b) relates to visas for fiscal years beginning with fiscal year 1992, with general transition provisions, see section 161(b), (c) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Section 702(c) of Pub. L. 101-649 provided that: “The amendments made by this section [amending sections 1154 and 1255 of this title] shall apply to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(b) of Pub. L. 99-639 provided that: “The amendment made by subsection (a) [amending this section] shall apply to petitions filed on or after the date of the enactment of this Act [Nov. 10, 1986].”

Section 5(c) of Pub. L. 99-639 provided that: “The amendments made by this section [amending this section and section 1255 of this title] shall apply to marriages entered into on or after the date of the enactment of this Act [Nov. 10, 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

ALIEN SHEEPHERDERS

Act Sept. 3, 1954, ch. 1254, §§ 1-3, 68 Stat. 1145, provided for the importation of skilled alien shepherders upon approval by the Attorney General, certification to the Secretary of State by the Attorney General of names and addresses of shepherders whose applications for importation were approved, and issuance of not more than 385 special nonquota immigrant visas. Provisions of said act expired on Sept. 3, 1955, by terms of section 1 thereof.

§ 1155. Revocation of approval of petitions; effective date

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

(June 27, 1952, ch. 477, title II, ch. 1, § 205, 66 Stat. 180; Pub. L. 86-363, § 5(a), (b), Sept. 22, 1959, 73 Stat. 644, 645; Pub. L. 87-301, §§ 3, 10, Sept. 26, 1961, 75 Stat. 650, 654; Pub. L. 89-236, § 5, Oct. 3, 1965, 79 Stat. 916; Pub. L. 104-208, div. C, title III, § 308(g)(3)(A), Sept. 30, 1996, 110 Stat. 3009-622; Pub. L. 108-458, title V, § 5304(c), Dec. 17, 2004, 118 Stat. 3736.)

AMENDMENTS

2004—Pub. L. 108-458 substituted “Secretary of Homeland Security” for “Attorney General” and struck out at end “In no case, however, shall such revocation have effect unless there is mailed to the petitioner’s last known address a notice of the revocation and unless notice of the revocation is communicated through the Secretary of State to the beneficiary of the petition before such beneficiary commences his journey to the United States. If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility shall be determined in the manner provided for by sections 1225 and 1229a of this title.”

1996—Pub. L. 104-208 substituted “1229a” for “1226”.

1965—Pub. L. 89-236 struck out entire section which had set out, in subsections (a) to (d), the procedure for granting nonquota status or preference by reason of relationship and inserted in its place, with minor changes, provisions formerly contained in section 1156 of this title authorizing the Attorney General to revoke his approval of petitions for good and sufficient cause.

1961—Subsec. (b). Pub. L. 87-301, § 3(a), provided that no petition for quota immigration status or a pref-

erence shall be approved if the beneficiary is an alien defined in section 1101(b)(1)(F) of this title, established requirements to be met by petitioners before a petition for nonquota immigrant status for a child as defined in section 1101(b)(1)(F) can be approved by the Attorney General, and authorized the administration of oaths by immigration officers when the petition is executed outside the United States.

Subsec. (c). Pub. L. 87-301, §§ 3(b), 10, substituted “section 1101(b)(1)(E) or (F)” for “section 1101(b)(1)(E)”, and provided that no petition shall be approved if the alien had previously been accorded a nonquota status under section 1101(a)(27)(A) of this title or a preference quota status under section 1153(a)(3) of this title, by reason of marriage entered into to evade the immigration laws.

1959—Subsec. (b). Pub. L. 86-363, § 5(a), authorized filing of petitions by any United States citizen claiming that an immigrant is his unmarried son or unmarried daughter, by any alien lawfully admitted for permanent residence claiming that an immigrant is his unmarried son or unmarried daughter instead of child, or by any United States citizen claiming that an immigrant is his married son or married daughter instead of son or daughter, and prohibited approval of petition for quota immigrant status or preference of alien without proof of parent relationship of the petitioner to such alien.

Subsec. (c). Pub. L. 86-363, § 5(b), limited approval to two petitions for one petitioner in behalf of a child as defined in section 1101(b)(1)(E) of this title unless necessary to prevent separation of brothers and sisters.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-458, title V, § 5304(d), Dec. 17, 2004, 118 Stat. 3736, provided that: “The amendments made by this section [amending this section and sections 1201 and 1227 of this title] shall take effect on the date of enactment of this Act [Dec. 17, 2004] and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act (8 U.S.C. 1155, 1201(i)) made before, on, or after such date.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

§ 1156. Unused immigrant visas

If an immigrant having an immigrant visa is denied admission to the United States and removed, or does not apply for admission before the expiration of the validity of his visa, or if an alien having an immigrant visa issued to him as a preference immigrant is found not to be a preference immigrant, an immigrant visa or a preference immigrant visa, as the case may be, may be issued in lieu thereof to another qualified alien.

(June 27, 1952, ch. 477, title II, ch. 1, § 206, 66 Stat. 181; Pub. L. 89-236, § 6, Oct. 3, 1965, 79 Stat. 916; Pub. L. 104-208, div. C, title III, § 308(d)(4)(D), Sept. 30, 1996, 110 Stat. 3009-618.)

AMENDMENTS

1996—Pub. L. 104-208 substituted “denied admission to the United States and removed” for “excluded from admission to the United States and deported”.

1965—Pub. L. 89-236 substituted provisions allowing immigrant visas or preference immigrant visas to be is-

sued to another qualified alien in lieu of immigrants excluded or deported, immigrants failing to apply for admission, or immigrants found not to be preference immigrants, for provisions relating to revocation of approval of petitions which, with minor amendments, were transferred to section 1155 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

§ 1157. Annual admission of refugees and admission of emergency situation refugees

(a) Maximum number of admissions; increases for humanitarian concerns; allocations

(1) Except as provided in subsection (b) of this section, the number of refugees who may be admitted under this section in fiscal year 1980, 1981, or 1982, may not exceed fifty thousand unless the President determines, before the beginning of the fiscal year and after appropriate consultation (as defined in subsection (e) of this section), that admission of a specific number of refugees in excess of such number is justified by humanitarian concerns or is otherwise in the national interest.

(2) Except as provided in subsection (b) of this section, the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

(3) Admissions under this subsection shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.

(4) In the determination made under this subsection for each fiscal year (beginning with fiscal year 1992), the President shall enumerate, with the respective number of refugees so determined, the number of aliens who were granted asylum in the previous year.

(b) Determinations by President respecting number of admissions for humanitarian concerns

If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a) of this section, the President may fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the

President after the appropriate consultation provided under this subsection.

(c) Admission by Attorney General of refugees; criteria; admission status of spouse or child; applicability of other statutory requirements; termination of refugee status of alien, spouse or child

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b) of this section, the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter.

(2)(A) A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 1101(a)(42) of this title, be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(B) An unmarried alien who seeks to accompany, or follow to join, a parent granted admission as a refugee under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was filed but while it was pending.

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission.

(d) Oversight reporting and consultation requirements

(1) Before the start of each fiscal year the President shall report to the Committees on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year. The President shall provide for periodic discussions between designated representatives of the President and members of such committees regarding changes in the worldwide refugee situation, the progress of refugee admissions, and the possible need for adjustments in the allocation of admissions among refugees.

(2) As soon as possible after representatives of the President initiate appropriate consultation with respect to the number of refugee admissions under subsection (a) of this section or with respect to the admission of refugees in response to an emergency refugee situation under subsection (b) of this section, the Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of such consultation.

(3)(A) After the President initiates appropriate consultation prior to making a determination under subsection (a) of this section, a hearing to review the proposed determination shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(B) After the President initiates appropriate consultation prior to making a determination, under subsection (b) of this section, that the number of refugee admissions should be increased because of an unforeseen emergency refugee situation, to the extent that time and the nature of the emergency refugee situation permit, a hearing to review the proposal to increase refugee admissions shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(e) "Appropriate consultation" defined

For purposes of this section, the term "appropriate consultation" means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

(1) A description of the nature of the refugee situation.

(2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.

(3) A description of the proposed plans for their movement and resettlement and the esti-

mated cost of their movement and resettlement.

(4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.

(5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.

(6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.

(7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

(f) Training

(1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 1158 of this title.

(2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

(June 27, 1952, ch. 477, title II, ch. 1, §207, as added Pub. L. 96-212, title II, §201(b), Mar. 17, 1980, 94 Stat. 103; amended Pub. L. 100-525, §9(h), Oct. 24, 1988, 102 Stat. 2620; Pub. L. 101-649, title I, §104(b), title VI, §603(a)(4), Nov. 29, 1990, 104 Stat. 4985, 5082; Pub. L. 102-232, title III, §307(l)(1), Dec. 12, 1991, 105 Stat. 1756; Pub. L. 104-208, div. C, title VI, §601(b), Sept. 30, 1996, 110 Stat. 3009-689; Pub. L. 105-292, title VI, §602(a), Oct. 27, 1998, 112 Stat. 2812; Pub. L. 107-208, §5, Aug. 6, 2002, 116 Stat. 929; Pub. L. 109-13, div. B, title I, §101(g)(2), May 11, 2005, 119 Stat. 305.)

PRIOR PROVISIONS

A prior section 1157, act June 27, 1952, ch. 477, title II, ch. 1, §207, 66 Stat. 181, prohibited issuance of immigrant visas to other immigrants in lieu of immigrants excluded from admission, immigrants deported, immigrants failing to apply for admission to the United States, or immigrants found to be nonquota immigrants after having previously been found to be quota immigrants, prior to repeal by Pub. L. 89-236, §7, Oct. 3, 1965, 79 Stat. 916.

AMENDMENTS

2005—Subsec. (a)(5). Pub. L. 109-13 struck out par. (5) which read as follows: "For any fiscal year, not more than a total of 1,000 refugees may be admitted under this subsection or granted asylum under section 1158 of this title pursuant to a determination under the third sentence of section 1101(a)(42) of this title (relating to persecution for resistance to coercive population control methods)."

2002—Subsec. (c)(2). Pub. L. 107-208 designated existing provisions as subpar. (A) and added subpar. (B).

1998—Subsec. (f). Pub. L. 105-292 added subsec. (f).

1996—Subsec. (a)(5). Pub. L. 104-208 added par. (5).

1991—Subsec. (c)(3). Pub. L. 102-232 substituted "subparagraph (A)" for "subparagraphs (A)".

1990—Subsec. (a)(4). Pub. L. 101-649, §104(b), added par. (4).

Subsec. (c)(3). Pub. L. 101-649, §603(a)(4), substituted “(4), (5), and (7)(A)” for “(14), (15), (20), (21), (25), and (32)” and “(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3))” for “(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)”.

1988—Subsec. (c)(1). Pub. L. 100-525 substituted “otherwise” for “otherwise”.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-13, div. B, title I, §101(h)(5), May 11, 2005, 119 Stat. 306, provided that: “The amendments made by subsection (g) [amending this section and section 1159 of this title] shall take effect on the date of the enactment of this division [May 11, 2005].”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107-208, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(l) of Pub. L. 102-232 provided that the amendments made by that section [amending this section, sections 1159, 1161, 1187, 1188, 1254a, 1255a, and 1322 of this title, and provisions set out as notes under sections 1101 and 1255 of this title] are effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 104(b) of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(4) of Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section (with the exception of subsec. (c) which is effective Apr. 1, 1980) effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

DELEGATION OF FUNCTIONS

For delegation of Congressional reporting functions of President under subsec. (d) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

BRING THEM HOME ALIVE PROGRAM

Pub. L. 106-484, Nov. 9, 2000, 114 Stat. 2195, as amended by Pub. L. 107-258, §2, Oct. 29, 2002, 116 Stat. 1738, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Bring Them Home Alive Act of 2000’.

“SEC. 2. AMERICAN VIETNAM WAR POW/MIA ASYLUM PROGRAM.

“(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall

grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

“(b) ELIGIBILITY.—Refugee status shall be granted under subsection (a) to—

“(1) any alien who—

“(A) is a national of Vietnam, Cambodia, Laos, China, or any of the independent states of the former Soviet Union; and

“(B) personally delivers into the custody of the United States Government a living American Vietnam War POW/MIA; and

“(2) any parent, spouse, or child of an alien described in paragraph (1).

“(c) DEFINITIONS.—In this section:

“(1) AMERICAN VIETNAM WAR POW/MIA.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘American Vietnam War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Vietnam War; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Vietnam War.

“(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

“(2) MISSING STATUS.—The term ‘missing status’, with respect to the Vietnam War, means the status of an individual as a result of the Vietnam War if immediately before that status began the individual—

“(A) was performing service in Vietnam; or

“(B) was performing service in Southeast Asia in direct support of military operations in Vietnam.

“(3) VIETNAM WAR.—The term ‘Vietnam War’ means the conflict in Southeast Asia during the period that began on February 28, 1961, and ended on May 7, 1975.

“SEC. 3. AMERICAN KOREAN WAR POW/MIA ASYLUM PROGRAM.

“(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

“(b) ELIGIBILITY.—Refugee status shall be granted under subsection (a) to—

“(1) any alien—

“(A) who is a national of North Korea, China, or any of the independent states of the former Soviet Union; and

“(B) who personally delivers into the custody of the United States Government a living American Korean War POW/MIA; and

“(2) any parent, spouse, or child of an alien described in paragraph (1).

“(c) DEFINITIONS.—In this section:

“(1) AMERICAN KOREAN WAR POW/MIA.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘American Korean War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Korean War; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Korean War.

“(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United

States Code, that such individual is officially absent from such individual's post of duty without authority.

“(2) KOREAN WAR.—The term ‘Korean War’ means the conflict on the Korean peninsula during the period that began on June 27, 1950, and ended January 31, 1955.

“(3) MISSING STATUS.—The term ‘missing status’, with respect to the Korean War, means the status of an individual as a result of the Korean War if immediately before that status began the individual—

“(A) was performing service in the Korean peninsula; or

“(B) was performing service in Asia in direct support of military operations in the Korean peninsula.

“SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

“(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

“(b) ELIGIBILITY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), an alien described in this subsection is—

“(A) any alien who—

“(i) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

“(ii) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

“(B) any parent, spouse, or child of an alien described in subparagraph (A).

“(2) EXCEPTIONS.—An alien described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).

“(c) DEFINITIONS.—In this section:

“(1) AMERICAN PERSIAN GULF WAR POW/MIA.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘American Persian Gulf War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Persian Gulf War, or any successor conflict, operation, or action; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Persian Gulf War, or any successor conflict, operation, or action.

“(B) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual's post of duty without authority.

“(2) MISSING STATUS.—The term ‘missing status’, with respect to the Persian Gulf War, or any successor conflict, operation, or action, means the status of an individual as a result of the Persian Gulf War, or such conflict, operation, or action, if immediately before that status began the individual—

“(A) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

“(B) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

“(3) PERSIAN GULF WAR.—The term ‘Persian Gulf War’ means the period beginning on August 2, 1990,

and ending on the date thereafter prescribed by Presidential proclamation or by law.”

“SEC. 4. BROADCASTING INFORMATION ON THE ‘BRING THEM HOME ALIVE’ PROGRAM.

“(a) REQUIREMENT.—

“(1) IN GENERAL.—The International Broadcasting Bureau shall broadcast, through WORLDNET Television and Film Service and Radio, VOA-TV, VOA Radio, or otherwise, information that promotes the ‘Bring Them Home Alive’ refugee program under this Act to foreign countries covered by paragraph (2).

“(2) COVERED COUNTRIES.—The foreign countries covered by paragraph (1) are—

“(A) Vietnam, Cambodia, Laos, China, and North Korea;

“(B) Russia and the other independent states of the former Soviet Union; and

“(C) Iraq, Kuwait, or any other country of the Greater Middle East Region (as determined by the International Broadcasting Bureau in consultation with the Attorney General and the Secretary of State).

“(b) LEVEL OF PROGRAMMING.—The International Broadcasting Bureau shall broadcast—

“(1) at least 20 hours of the programming described in subsection (a)(1) during the 30-day period that begins 15 days after the date of enactment of this Act [Nov. 9, 2000]; and

“(2) at least 10 hours of the programming described in subsection (a)(1) in each calendar quarter during the period beginning with the first calendar quarter that begins after the date of enactment of this Act and ending five years after the date of enactment of this Act.

“(c) AVAILABILITY OF INFORMATION ON THE INTERNET.—The International Broadcasting Bureau shall ensure that information regarding the ‘Bring Them Home Alive’ refugee program under this Act is readily available on the World Wide Web sites of the Bureau.

“(d) SENSE OF CONGRESS.—It is the sense of Congress that RFE/RL, Incorporated, Radio Free Asia, and any other recipient of Federal grants that engages in international broadcasting to the countries covered by subsection (a)(2) should broadcast information similar to the information required to be broadcast by subsection (a)(1).

“(e) DEFINITION.—The term ‘International Broadcasting Bureau’ means the International Broadcasting Bureau of the United States Information Agency or, on and after the effective date of title XIII of the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in division G of Public Law 105-277) [see Effective Date note set out under section 6531 of Title 22, Foreign Relations and Intercourse], the International Broadcasting Bureau of the Broadcasting Board of Governors.

“SEC. 5. INDEPENDENT STATES OF THE FORMER SOVIET UNION DEFINED.

“In this Act, the term ‘independent states of the former Soviet Union’ has the meaning given the term in section 3 of the FREEDOM Support Act (22 U.S.C. 5801).”

GENDER-RELATED PERSECUTION TASK FORCE

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title II, §254], Nov. 29, 1999, 113 Stat. 1536, 1501A-432, provided that:

“(a) ESTABLISHMENT OF TASK FORCE.—The Secretary of State, in consultation with the Attorney General and other appropriate Federal agencies, shall establish a task force with the goal of determining eligibility guidelines for women seeking refugee status overseas due to gender-related persecution.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of State shall prepare and submit to the Congress a report outlining the guidelines determined by the task force under subsection (a).”

ESTABLISHING CATEGORIES OF ALIENS FOR PURPOSES
OF REFUGEE DETERMINATIONS

Pub. L. 101-167, title V, § 599D, Nov. 21, 1989, 103 Stat. 1261, as amended by Pub. L. 101-513, title V, § 598(a), Nov. 5, 1990, 104 Stat. 2063; Pub. L. 102-391, title V, § 582(a)(1), (b)(1), (c), Oct. 6, 1992, 106 Stat. 1686; Pub. L. 102-511, title IX, § 905(a), (b)(1), (c), Oct. 24, 1992, 106 Stat. 3356; Pub. L. 103-236, title V, § 512(1), Apr. 30, 1994, 108 Stat. 466; Pub. L. 104-208, div. A, title I, § 101(c) [title V, § 575(1)], Sept. 30, 1996, 110 Stat. 3009-121, 3009-168; Pub. L. 104-319, title I, § 101(1), Oct. 19, 1996, 110 Stat. 3865; Pub. L. 105-118, title V, § 574(1), Nov. 26, 1997, 111 Stat. 2432; Pub. L. 105-277, div. A, § 101(f) [title VII, § 705(1)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-389; Pub. L. 106-113, div. B, § 1000(a)(4) [title II, § 214(1)], Nov. 29, 1999, 113 Stat. 1535, 1501A-240; Pub. L. 106-554, § 1(a)(1) [title II, § 212(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-27; Pub. L. 107-116, title II, § 213(1), Jan. 10, 2002, 115 Stat. 2200; Pub. L. 108-7, div. G, title II, § 213(1), Feb. 20, 2003, 117 Stat. 324; Pub. L. 108-199, div. E, title II, § 213(1), Jan. 23, 2004, 118 Stat. 253; Pub. L. 108-447, div. F, title II, § 213(1), Dec. 8, 2004, 118 Stat. 3139; Pub. L. 109-102, title V, § 534(m)(1), Nov. 14, 2005, 119 Stat. 2211; Pub. L. 109-289, div. B, title II, § 20412(b)(1), as added by Pub. L. 110-5, § 2, Feb. 15, 2007, 121 Stat. 25; Pub. L. 110-161, div. J, title VI, § 634(k)(1), Dec. 26, 2007, 121 Stat. 2329, provided that:

“(a) IN GENERAL.—In the case of an alien who is within a category of aliens established under subsection (b), the alien may establish, for purposes of admission as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157], that the alien has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution.

“(b) ESTABLISHMENT OF CATEGORIES.—

“(1) For purposes of subsection (a), the Attorney General, in consultation with the Secretary of State and the Coordinator for Refugee Affairs, shall establish—

“(A) one or more categories of aliens who are or were nationals and residents of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion.[:]

“(B) one or more categories of aliens who are or were nationals and residents of Vietnam, Laos, or Cambodia and who share common characteristics that identify them as targets of persecution in such respective foreign state on such an account; and

“(C) one or more categories of aliens who are or were nationals and residents of the Islamic Republic of Iran who, as members of a religious minority in Iran, share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion.

“(2)(A) Aliens who are (or were) nationals and residents of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who are Jews or Evangelical Christians shall be deemed a category of alien established under paragraph (1)(A).

“(B) Aliens who are (or were) nationals of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who are current members of, and demonstrate public, active, and continuous participation (or attempted participation) in the religious activities of, the Ukrainian Catholic Church or the Ukrainian Orthodox Church, shall be deemed a category of alien established under paragraph (1)(A).

“(C) Aliens who are (or were) nationals and residents of Vietnam, Laos, or Cambodia and who are members of categories of individuals determined, by the Attorney General in accordance with ‘Immigration and Naturalization Service Worldwide Guide-

lines for Overseas Refugee Processing’ (issued by the Immigration and Naturalization Service in August 1983) shall be deemed a category of alien established under paragraph (1)(B).

“(3) Within the number of admissions of refugees allocated for for [sic] each of fiscal years 1990, 1991, and 1992 for refugees who are nationals of the Soviet Union under section 207(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1157(a)(3)] and within the number of such admissions allocated for each of fiscal years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 for refugees who are nationals of the independent states of the former Soviet Union, Estonia, Latvia, and Lithuania under such section, notwithstanding any other provision of law, the President shall allocate one thousand of such admissions for such fiscal year to refugees who are within the category of aliens described in paragraph (2)(B).

“(c) WRITTEN REASONS FOR DENIALS OF REFUGEE STATUS.—Each decision to deny an application for refugee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial.

“(d) PERMITTING CERTAIN ALIENS WITHIN CATEGORIES TO REAPPLY FOR REFUGEE STATUS.—Each alien who is within a category established under this section and who (after August 14, 1988, and before the date of the enactment of this Act [Nov. 21, 1989]) was denied refugee status shall be permitted to reapply for such status. Such an application shall be determined taking into account the application of this section.

“(e) PERIOD OF APPLICATION.—

“(1) Subsections (a) and (b) shall take effect on the date of the enactment of this Act [Nov. 21, 1989] and shall only apply to applications for refugee status submitted before October 1, 2008.

“(2) Subsection (c) shall apply to decisions made after the date of the enactment of this Act and before October 1, 2008.

“(3) Subsection (d) shall take effect on the date of the enactment of this Act and shall only apply to re-applications for refugee status submitted before October 1, 2008.”

[Pub. L. 109-102, § 534(m)(1)(A), which directed amendment of section 599D(b)(3) of Pub. L. 101-167, set out above, by substituting “2005, and 2006” for “and 2005”, could not be executed.]

[Pub. L. 108-447, § 213(1)(A), which directed amendment of section 599D(b)(3) of Pub. L. 101-167, set out above, by substituting “1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and 2006” for “1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005”, was executed by making the substitution for “1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004” to reflect the probable intent of Congress.]

[Pub. L. 108-199, § 213(1)(A), which directed amendment of section 599D(b)(3) of Pub. L. 101-167, set out above, by substituting “1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004” for “1997, 1998, 1999, 2000, 2001, 2002, and 2003”, was executed by making the substitution for “1997, 1998, 1999, 2000, 2001, 2002 and 2003” to reflect the probable intent of Congress.]

[Pub. L. 108-7, § 213(1)(A), which directed amendment of section 599D(b)(3) of Pub. L. 101-167, set out above, by substituting “1997, 1998, 1999, 2000, 2001, 2002 and 2003” for “1997, 1998, 1999, 2000, 2001, 2002 and 2001”, was executed by making the substitution for “1997, 1998, 1999, 2000, 2001, 2002, and 2002” to reflect the probable intent of Congress.]

[Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of Title 22.]

EL SALVADORAN REFUGEES

Pub. L. 97-113, title VII, § 731, Dec. 29, 1981, 95 Stat. 1557, provided that: “It is the sense of the Congress that

the administration should continue to review, on a case-by-case basis, petitions for extended voluntary departure made by citizens of El Salvador who claim that they are subject to persecution in their homeland, and should take full account of the civil strife in El Salvador in making decisions on such petitions.”

TIME FOR DETERMINATIONS BY PRESIDENT FOR FISCAL YEAR 1980

Section 204(d)(1) of Pub. L. 96-212 provided that: “Notwithstanding section 207(a) of the Immigration and Nationality Act (as added by section 201(b) of this title [subsec. (a) of this section], the President may make the determination described in the first sentence of such section not later than forty-five days after the date of the enactment of this Act [Mar. 17, 1980] for fiscal year 1980.”

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to this section concerning the admission and adjustment of status of refugees for particular fiscal years were contained in the following Presidential Determinations:

- Presidential Determination No. 2008-1, Oct. 2, 2007, 72 F.R. 58991.
- Presidential Determination No. 2007-1, Oct. 11, 2006, 71 F.R. 64435.
- Presidential Determination No. 2006-3, Oct. 24, 2005, 70 F.R. 65825.
- Presidential Determination No. 2004-53, Sept. 30, 2004, 69 F.R. 60943.
- Presidential Determination No. 2004-06, Oct. 21, 2003, 68 F.R. 63979.
- Presidential Determination No. 03-02, Oct. 16, 2002, 67 F.R. 65469.
- Presidential Determination No. 02-04, Nov. 21, 2001, 66 F.R. 63487.
- Presidential Determination No. 2000-32, Sept. 29, 2000, 65 F.R. 59697.
- Presidential Determination No. 99-45, Sept. 30, 1999, 64 F.R. 54505.
- Presidential Determination No. 99-33, Aug. 12, 1999, 64 F.R. 47341.
- Presidential Determination No. 98-39, Sept. 30, 1998, 63 F.R. 55001.
- Presidential Determination No. 97-37, Sept. 30, 1997, 62 F.R. 53219.
- Presidential Determination No. 96-59, Sept. 30, 1996, 61 F.R. 56869.
- Presidential Determination No. 95-48, Sept. 29, 1995, 60 F.R. 53091.
- Presidential Determination No. 95-1, Oct. 1, 1994, 59 F.R. 52393.
- Presidential Determination No. 94-1, Oct. 1, 1993, 58 F.R. 52213.
- Presidential Determination No. 93-1, Oct. 2, 1992, 57 F.R. 47253.
- Presidential Determination No. 92-2, Oct. 9, 1991, 56 F.R. 51633.
- Presidential Determination No. 91-3, Oct. 12, 1990, 55 F.R. 41979.
- Presidential Determination No. 90-2, Oct. 6, 1989, 54 F.R. 43035.
- Presidential Determination No. 89-15, June 19, 1989, 54 F.R. 31493.
- Presidential Determination No. 89-2, Oct. 5, 1988, 53 F.R. 45249.
- Presidential Determination No. 88-16, May 20, 1988, 53 F.R. 21405.
- Presidential Determination No. 88-01, Oct. 5, 1987, 52 F.R. 42073.
- Presidential Determination No. 87-1, Oct. 17, 1986, 51 F.R. 39637.
- Presidential Determination No. 83-2, Oct. 11, 1982, 47 F.R. 46483.
- Presidential Determination No. 82-1, Oct. 10, 1981, 46 F.R. 55233.
- Presidential Determination No. 80-28, Sept. 30, 1980, 45 F.R. 68365.

EX. ORD. NO. 12208. CONSULTATIONS ON THE ADMISSION OF REFUGEES

Ex. Ord. No. 12208, Apr. 15, 1980, 45 F.R. 25789, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13286, § 49, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Refugee Act of 1980 (P.L. 96-212; 8 U.S.C. 1101 note), the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are hereby delegated to the Secretary of State and the Secretary of Homeland Security, or either of them, the functions of initiating and carrying out appropriate consultations with members of the Committees on the Judiciary of the Senate and of the House of Representatives for purposes of Sections 101(a)(42)(B) and 207(a), (b), (d), and (e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(42)(B) and 1157(a), (b), (d), and (e)).

1-102. There are reserved to the President the following functions under the Immigration and Nationality Act, as amended [8 U.S.C. 1101 et seq.].

(a) To specify special circumstances for purposes of qualifying persons as refugees under Section 101(a)(42)(B) [8 U.S.C. 1101(a)(42)(B)].

(b) To make determinations under Sections 207(a)(1), 207(a)(2), 207(a)(3) and 207(b) [8 U.S.C. 1157(a)(1) to (3) and (b)].

(c) To fix the number of refugees to be admitted under Section 207(b).

1-103. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

§ 1158. Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum**(1) In general****(A) Eligibility**

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof**(i) In general**

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record.

Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions**(A) In general**

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules**(i) Conviction of aggravated felony**

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children**(A) In general**

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(c) Asylum status**(1) In general**

In the case of an alien granted asylum under subsection (b) of this section, the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2) of this section;

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section¹ 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure**(1) Applications**

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and pay-

¹ So in original. Probably should be "sections".

ment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous applica-

tion for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(June 27, 1952, ch. 477, title II, ch. 1, §208, as added Pub. L. 96-212, title II, §201(b), Mar. 17, 1980, 94 Stat. 105; amended Pub. L. 101-649, title V, §515(a)(1), Nov. 29, 1990, 104 Stat. 5053; Pub. L. 103-322, title XIII, §130005(b), Sept. 13, 1994, 108 Stat. 2028; Pub. L. 104-132, title IV, §421(a), Apr. 24, 1996, 110 Stat. 1270; Pub. L. 104-208, div. C, title VI, §604(a), Sept. 30, 1996, 110 Stat. 3009-690; Pub. L. 107-56, title IV, §411(b)(2), Oct. 26, 2001, 115 Stat. 348; Pub. L. 107-208, §4, Aug. 6, 2002, 116 Stat. 928; Pub. L. 109-13, div. B, title I, §101(a), (b), May 11, 2005, 119 Stat. 302, 303.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109-13, §101(a)(1), (2), designated existing provisions as subpar. (A), inserted subpar. heading, and substituted “The Secretary of Homeland Security or the Attorney General” for “The Attorney General” and “the Secretary of Homeland Security or the Attorney General” for “the Attorney General” in two places.

Subsec. (b)(1)(B). Pub. L. 109-13, §101(a)(3), added subpar. (B).

Subsec. (b)(2)(A)(v). Pub. L. 109-13, §101(b), substituted “described in” for “inadmissible under” in two places and struck out “removable under” before “section 1227(a)(4)(B)”.

2002—Subsec. (b)(3). Pub. L. 107-208 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.”

2001—Subsec. (b)(2)(A)(v). Pub. L. 107-56 substituted “(III), (IV), or (VI)” for “(III), or (IV)”.

1996—Pub. L. 104-208 substituted “Asylum” for “Asylum procedure” as section catchline and amended text generally, substituting subsections (a) to (d) for former subsections (a) to (e).

Subsec. (a). Pub. L. 104-132, §421(a), inserted at end “The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is excludable under subclause (I), (II), or (III) of section 1182(a)(3)(B)(i) of this title or deportable under section 1251(a)(4)(B) of this title, unless the Attorney General determines, in the discretion of the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.”

1994—Subsec. (e). Pub. L. 103-322 added subsec. (e).

1990—Subsec. (d). Pub. L. 101-649 added subsec. (d).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-13, div. B, title I, §101(h)(1), (2), May 11, 2005, 119 Stat. 305, provided that:

“(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect as if enacted on March 1, 2003.

“(2) The amendments made by subsections (a)(3), (b), (c), and (d) [amending this section and sections 1229a and 1231 of this title] shall take effect on the date of the enactment of this division [May 11, 2005] and shall

apply to applications for asylum, withholding, or other relief from removal made on or after such date.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107-208, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107-56, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 604(c) of div. C of Pub. L. 104-208 provided that: “The amendment made by subsection (a) [amending this section] shall apply to applications for asylum filed on or after the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Sept. 30, 1996].

Section 421(b) of Pub. L. 104-132 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 24, 1996] and apply to asylum determinations made on or after such date.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 515(b) of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §306(a)(13), Dec. 12, 1991, 105 Stat. 1752, provided that:

“(1) The amendment made by subsection (a)(1) [amending this section] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for asylum made on or after such date.

“(2) The amendment made by subsection (a)(2) [amending section 1253 of this title] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for withholding of deportation made on or after such date.”

EFFECTIVE DATE

Section effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

EXPEDITIOUS REMOVAL FOR DENIED ASYLUM APPLICANTS

Section 130005 of Pub. L. 103-322, as amended by Pub. L. 104-208, div. C, title III, §308(e)(1)(P), (17), Sept. 30, 1996, 110 Stat. 3009-620, 3009-621, provided:

“(a) IN GENERAL.—The Attorney General may provide for the expeditious adjudication of asylum claims and the expeditious removal of asylum applicants whose applications have been finally denied, unless the applicant remains in an otherwise valid nonimmigrant status.

“(b) EMPLOYMENT AUTHORIZATION.—[Amended this section.]

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- “(1) \$64,000,000 for fiscal year 1995;
- “(2) \$90,000,000 for fiscal year 1996;
- “(3) \$93,000,000 for fiscal year 1997; and
- “(4) \$91,000,000 for fiscal year 1998.”

TIME FOR ESTABLISHMENT OF ASYLUM PROCEDURE BY ATTORNEY GENERAL

Section 204(d)(2) of Pub. L. 96-212 provided that: “The Attorney General shall establish the asylum procedure referred to in section 208(a) of the Immigration and Nationality Act (as added by section 201(b) of this title) [former subsec. (a) of this section] not later than June 1, 1980.”

§ 1159. Adjustment of status of refugees

(a) Inspection and examination by Department of Homeland Security

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of the alien’s inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien’s arrival into the United States.

(b) Requirements for adjustment

The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Secretary of Homeland Security or

the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Coordination with section 1182

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(June 27, 1952, ch. 477, title II, ch. 1, §209, as added Pub. L. 96-212, title II, §201(b), Mar. 17, 1980, 94 Stat. 105; amended Pub. L. 101-649, title I, §104(a)(1), title VI, §603(a)(4), Nov. 29, 1990, 104 Stat. 4985, 5082; Pub. L. 102-232, title III, §307(l)(1), Dec. 12, 1991, 105 Stat. 1756; Pub. L. 104-208, div. C, title III, §§308(g)(3)(A), (4)(A), 371(b)(2), Sept. 30, 1996, 110 Stat. 3009-622, 3009-645; Pub. L. 109-13, div. B, title I, §101(g)(1), May 11, 2005, 119 Stat. 305.)

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109-13, §101(g)(1)(A)(i), substituted "Department of Homeland Security" for "Service" in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 109-13, §101(g)(1)(A)(ii), substituted "Secretary of Homeland Security or the Attorney General" for "Attorney General" in two places.

Subsec. (b). Pub. L. 109-13, §101(g)(1)(B)(ii), substituted "Secretary of Homeland Security or the Attorney General" for "Attorney General" in concluding provisions.

Pub. L. 109-13, §101(g)(1)(B)(i), added introductory provisions and struck out former introductory provisions which read as follows: "Not more than 10,000 of the refugee admissions authorized under section 1157(a) of this title in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—".

Subsec. (c). Pub. L. 109-13, §101(g)(1)(C), substituted "Secretary of Homeland Security or the Attorney General" for "Attorney General".

1996—Subsec. (a)(1). Pub. L. 104-208, §308(g)(3)(A), (4)(A), substituted "1229a" for "1226" and "1231" for "1227" in concluding provisions.

Subsec. (a)(2). Pub. L. 104-208, §371(b)(2), substituted "an immigration judge" for "a special inquiry officer".

1991—Subsec. (c). Pub. L. 102-232 substituted "subparagraph (A)" for "subparagraphs (A)".

1990—Subsec. (b). Pub. L. 101-649, §104(a)(1), substituted "10,000" for "five thousand".

Subsec. (c). Pub. L. 101-649, §603(a)(4), substituted "(4), (5), and (7)(A)" for "(14), (15), (20), (21), (25), and (32)" and "(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3))" for "(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(3)(A), (4)(A) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 371(b)(2) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(l) of Pub. L. 102-232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 104(a)(2) of Pub. L. 101-649 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1991 and the President is authorized, without the need for appropriate consultation, to increase the refugee determination previously made under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157] for fiscal year 1991 in order to make such amendment effective for such fiscal year."

Amendment by section 603(a)(4) of Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES; ADJUSTMENT OF CERTAIN FORMER ASYLEES

Section 104(c), (d) of Pub. L. 101-649, as amended by Pub. L. 104-208, div. C, title VI, §604(b)(2), Sept. 30, 1996, 110 Stat. 3009-694, provided that:

"(c) WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES.—The numerical limitation on the number of aliens whose status may be adjusted under section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall not apply to an alien described in subsection (d) or to an alien who has applied for adjustment of status under such section on or before June 1, 1990.

"(d) ADJUSTMENT OF CERTAIN FORMER ASYLEES.—

"(1) IN GENERAL.—Subject to paragraph (2), the provisions of section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall also apply to an alien—

"(A) who was granted asylum before the date of the enactment of this Act [Nov. 29, 1990] (regardless of whether or not such asylum has been terminated under section 208 of the Immigration and Nationality Act [8 U.S.C. 1158]),

"(B) who is no longer a refugee because of a change in circumstances in a foreign state, and

"(C) who was (or would be) qualified for adjustment of status under section 209(b) of the Immigration and Nationality Act as of the date of the enactment of this Act but for paragraphs (2) and (3) thereof and but for any numerical limitation under such section.

"(2) APPLICATION OF PER COUNTRY LIMITATIONS.—The number of aliens who are natives of any foreign state who may adjust status pursuant to paragraph (1) in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)] and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of such Act."

[Section 104(c), (d) of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fis-

cal year 1991, see section 161(b) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

§ 1160. Special agricultural workers

(a) Lawful residence

(1) In general

The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) Application period

The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after November 6, 1986.

(B) Performance of seasonal agricultural services and residence in the United States

The alien must establish that he has—

- (i) resided in the United States, and
- (ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) Admissible as immigrant

The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2) of this section.

(2) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) Group 1

Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) Group 2

In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) Numerical limitation

Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence

(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

- (i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 1182(a)(6)(C)(i) of this title, or
- (ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2) of this section, or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an “employment authorized” endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general

Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 1101(a)(20) of this title), other than under any provision of the immigration laws.

(b) Applications for adjustment of status

(1) To whom may be made

(A) Within the United States

The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

- (i) with the Attorney General, or
- (ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the United States

The Attorney General, in cooperation with the Secretary of State, shall provide a proce-

whereby an alien may apply for adjustment of status under subsection (a)(1) of this section at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications

For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89-732 [8 U.S.C. 1255 note], or Public Law 95-145 [8 U.S.C. 1255 note].

(3) Proof of eligibility

(A) In general

An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) of this section through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) Documentation of work history

(i) An alien applying for adjustment of status under subsection (a)(1) of this section has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii) of this section).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) of this section by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities

Each designated entity must agree to forward to the Attorney General applications

filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information

Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6) of this subsection.

(6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures

The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction

(i) In general

Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions

Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immi-

gration enforcement or law enforcement purposes.

(D) Crime

Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(7) Penalties for false statements in applications

(A) Criminal penalty

Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(B) Exclusion

An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 1182(a)(6)(C)(i) of this title.

(c) Waiver of numerical limitations and certain grounds for exclusion

(1) Numerical limitations do not apply

The numerical limitations of sections 1151 and 1152 of this title shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion

In the determination of an alien's admissibility under subsection (a)(1)(C) of this section—

(A) Grounds of exclusion not applicable

The provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

Except as provided in clause (ii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived

The following provisions of section 1182(a) of this title may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (4) (relating to aliens likely to become public charges).

(III) Paragraph (2)(C) (relating to drug offenses), except for so much of such

paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof.

(C) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(4) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary stay of exclusion or deportation and work authorization for certain applicants

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) of this section and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) of this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) During application period

The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) of this section during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(3) Use of application fees to offset program costs

No application fees collected by the Service pursuant to this subsection may be used by the Service to offset the costs of the special agricultural worker legalization program until the Service implements the program consistent with the statutory mandate as follows:

(A) During the application period described in subsection (a)(1)(A) of this section the Service may grant temporary admission to the United States, work authorization, and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under

subsection (a) of this section at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this chapter.

(B) During the application period described in subsection (a)(1)(A) of this section any alien who has filed an application for adjustment of status within the United States as provided in subsection (b)(1)(A) of this section pursuant to the provision of 8 CFR section 210.1(j) is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(e) Administrative and judicial review

(1) Administrative and judicial review

There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) Administrative review

(A) Single level of administrative appellate review

The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) Standard for review

Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) Judicial review

(A) Limitation to review of exclusion or deportation

There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 1105a of this title (as in effect before October 1, 1996).

(B) Standard for judicial review

Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) Temporary disqualification of newly legalized aliens from receiving aid to families with dependent children

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) of this section, and notwithstanding any other provision of law, the alien is not eligible for assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]. Notwithstanding the previous sentence, in the case of an alien who would be eligible for assistance under a State program funded under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 1255a(h) of this title shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 1255a(h)(3) of this title to paragraph (1) is deemed a reference to the previous sentence.

(g) Treatment of special agricultural workers

For all purposes (subject to subsections (a)(5) and (f) of this section) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 1101(a)(20) of this title).

(h) "Seasonal agricultural services" defined

In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

(June 27, 1952, ch. 477, title II, ch. 1, §210, as added Pub. L. 99-603, title III, §302(a)(1), Nov. 6, 1986, 100 Stat. 3417; amended Pub. L. 100-202, §101(a) [title II, §211], Dec. 22, 1987, 101 Stat. 1329, 1329-18; Pub. L. 100-525, §2(m), Oct. 24, 1988, 102 Stat. 2613; Pub. L. 101-238, §4, Dec. 18, 1989, 103 Stat. 2103; Pub. L. 101-649, title VI, §603(a)(5), Nov. 29, 1990, 104 Stat. 5082; Pub. L. 102-232, title III, §§307(j), 309(b)(6), Dec. 12, 1991, 105 Stat. 1756, 1758; Pub. L. 103-416, title II, §219(d), (z)(7), Oct. 25, 1994, 108 Stat. 4316, 4318; Pub. L. 104-132, title IV, §431(b), Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104-193, title I, §110(s)(1), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104-208, div. C, title III, §§308(g)(2)(B), 384(d)(1), title VI, §623(b), Sept. 30, 1996, 110 Stat. 3009-622, 3009-653, 3009-697.)

REFERENCES IN TEXT

Public Law 89-732, referred to in subsec. (b)(2)(B), is Pub. L. 89-732, Nov. 2, 1966, 80 Stat. 1161, as amended, which is set out as a note under section 1255 of this title.

Public Law 95-145, referred to in subsec. (b)(2)(B), is Pub. L. 95-145, Oct. 28, 1977, 91 Stat. 1223, as amended. Title I of Pub. L. 95-145 is set out as a note under section 1255 of this title. Title II of Pub. L. 95-145 amended Pub. L. 94-23, which was set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse, and was repealed by Pub. L. 96-212, title III, §312(c), Mar. 17, 1980, 94 Stat. 117.

Section 1105a of this title, referred to in subsec. (e)(3)(A), was repealed by Pub. L. 104-208, div. C, title III, §306(b), Sept. 30, 1996, 110 Stat. 3009-612.

The Social Security Act, referred to in subsec. (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104-132, §431(b)(1), inserted before period at end “, except as allowed by a court order issued pursuant to paragraph (6) of this subsection”.

Subsec. (b)(6). Pub. L. 104-208, §623(b), amended par. (6) generally, substituting subpars. (A) to (D) for former subpars. (A) to (C) and introductory and concluding provisions, relating to confidentiality of information.

Pub. L. 104-208, §384(d)(1), substituted “Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each violation.” for “Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.” in concluding provisions.

Pub. L. 104-132, §431(b)(2), inserted before “Anyone who uses” in concluding provisions “Notwithstanding the preceding sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing, disclosure of information contained in the application of the alien to be used for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or for criminal law enforcement purposes against the alien whose application is to be disclosed or to discover information leading to the location or identity of the alien.”

Subsec. (e)(3)(A). Pub. L. 104-208, §308(g)(2)(B), inserted “(as in effect before October 1, 1996)” after “section 1105a of this title”.

Subsec. (f). Pub. L. 104-193 substituted “assistance under a State program funded under” for “aid under a State plan approved under” in two places.

1994—Subsec. (d)(3). Pub. L. 103-416, §219(d), inserted “the” before first reference to “Service” in introductory provisions.

Subsec. (d)(3)(B). Pub. L. 103-416, §219(z)(7), made technical correction to Pub. L. 102-232, §309(b)(6)(F). See 1991 Amendment note below.

1991—Subsec. (b)(7)(B). Pub. L. 102-232, §307(j), substituted “section 1182(a)(6)(C)(i)” for “section 1182(a)(19)”.

Subsec. (d)(3). Pub. L. 102-232, §309(b)(6)(A)–(C), realigned margins of par. (3) and its subparagraphs, and in introductory provisions substituted “Service” for “the Immigration and Naturalization Service (INS)” and “Service” for “INS” in two places.

Subsec. (d)(3)(A). Pub. L. 102-232, §309(b)(6)(D), (E), substituted “period described in” for “period as defined in” and “Service” for “INS”, and made technical amendment to reference to this chapter involving corresponding provision of original act.

Subsec. (d)(3)(B). Pub. L. 102-232, §309(b)(6)(F), as amended by Pub. L. 103-416, §219(z)(7), substituted “described in subsection (a)(1)(A)” for “as defined in subsection (a)(B)(1)(B)”.

Pub. L. 102-232, §309(b)(6)(G), made technical amendment to reference to subsection (b)(1)(A) of this section involving corresponding provision of original act.

1990—Subsec. (a)(3)(B)(i). Pub. L. 101-649, §603(a)(5)(A), substituted “1182(a)(6)(C)(i)” for “1182(a)(19)”.

Subsec. (c)(2)(A). Pub. L. 101-649, §603(a)(5)(B), substituted “(5) and (7)(A)” for “(14), (20), (21), (25), and (32)”.

Subsec. (c)(2)(B)(ii)(I). Pub. L. 101-649, §603(a)(5)(C), substituted “Paragraphs (2)(A) and (2)(B)” for “Paragraph (9) and (10)”.

Subsec. (c)(2)(B)(ii)(II). Pub. L. 101-649, §603(a)(5)(D), substituted “(4)” for “(15)”.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 101-649, §603(a)(5)(E), substituted “(2)(C)” for “(23)”.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 101-649, §603(a)(5)(F), substituted “Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof” for “Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations)”.

Subsec. (c)(2)(B)(ii)(V). Pub. L. 101-649, §603(a)(5)(G), struck out subcl. (V) which referred to par. (33).

Subsec. (c)(2)(C). Pub. L. 101-649, §603(a)(5)(H), substituted “1182(a)(4)” for “1182(a)(15)”.

1989—Subsec. (a)(3). Pub. L. 101-238, §4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(6)(A). Pub. L. 101-238, §4(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7).”

1988—Subsec. (g). Pub. L. 100-525 substituted “subsections (a)(5) and (f)” for “subsections (b)(3) and (f)”.

1987—Subsec. (d)(3). Pub. L. 100-202 added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(2)(B) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 384(d)(2) of div. C of Pub. L. 104-208 provided that: “The amendments made by this subsection [amending this section and section 1255a of this title] shall apply to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].”

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103-416 provided that the amendment made by subsec. (z)(7) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232.

Amendment by section 219(d) of Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(j) of Pub. L. 102-232 provided that the amendment made by that section is effective as if included in section 603(a)(5) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to applications for adjustment of status made on or after June 1, 1991, see section 601(e)(2) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(s) of Pub. L. 100-525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

COMMISSION ON AGRICULTURAL WORKERS

Section 304 of Pub. L. 99-603, as amended by Pub. L. 101-649, title VII, §704, Nov. 29, 1990, 104 Stat. 5086; Pub. L. 102-232, title III, §308(c), Dec. 12, 1991, 105 Stat. 1757, established Commission on Agricultural Workers to evaluate special agricultural worker provisions and labor markets in agricultural industry, required Commission to report to Congress not later than six years after Nov. 6, 1986, on its reviews, and provided that Commission terminate at the end of the 75-month period beginning with the month after November 1986.

§ 1161. Repealed. Pub. L. 103-416, title II, §219(ee)(1), Oct. 25, 1994, 108 Stat. 4319

Section, act June 27, 1952, ch. 477, title II, ch. 1, §210A, as added Nov. 6, 1986, Pub. L. 99-603, title III, §303(a), 100 Stat. 3422; amended Oct. 24, 1988, Pub. L. 100-525, §2(n)(1), 102 Stat. 2613; Nov. 29, 1990, Pub. L. 101-649, title VI, §603(a)(6), (b)(1), 104 Stat. 5083, 5085; Dec. 12, 1991, Pub. L. 102-232, title III, §307(l)(2), 105 Stat. 1756, related to determination of agricultural labor shortages and admission of additional special agricultural workers.

EFFECTIVE DATE OF REPEAL

Section 219(ee)(3) of Pub. L. 103-416, as added by Pub. L. 104-208, div. C, title VI, §671(b)(10), Sept. 30, 1996, 110 Stat. 3009-722, provided that: "The amendments made by this subsection [repealing this section] shall take effect on the date of the enactment of this Act [Oct. 25, 1994]."

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

§ 1181. Admission of immigrants into the United States

(a) Documents required; admission under quotas before June 30, 1968

Except as provided in subsection (b) and subsection (c) of this section no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents 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 Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) Readmission without required documents; Attorney General's discretion

Notwithstanding the provisions of section 1182(a)(7)(A) of this title in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 1101(a)(27)(A) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

(c) Nonapplicability to aliens admitted as refugees

The provisions of subsection (a) of this section shall not apply to an alien whom the Attorney General admits to the United States under section 1157 of this title.

(June 27, 1952, ch. 477, title II, ch. 2, §211, 66 Stat. 181; Pub. L. 89-236, §9, Oct. 3, 1965, 79 Stat. 917; Pub. L. 94-571, §7(c), Oct. 20, 1976, 90 Stat. 2706; Pub. L. 96-212, title II, §202, Mar. 17, 1980, 94 Stat. 106; Pub. L. 101-649, title VI, §603(a)(7), Nov. 29, 1990, 104 Stat. 5083.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-649 substituted "1182(a)(7)(A)" for "1182(a)(20)".

1980—Subsec. (a). Pub. L. 96-212, §202(1), inserted reference to subsection (c) of this section.

Subsec. (c). Pub. L. 96-212, §202(2), added subsec. (c). 1976—Subsec. (b). Pub. L. 94-571 substituted reference to section 1101 "(a)(27)(A)" of this title for "(a)(27)(B)".

1965—Subsec. (a). Pub. L. 89-236 restated requirement of an unexpired visa and passport for every immigrant arriving in United States to conform to the changes with respect to the classification of immigrant visas.

Subsec. (b). Pub. L. 89-236 substituted "returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible", for "otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily".

Subsec. (c). Pub. L. 89-236 repealed subsec. (c) which gave Attorney General discretionary authority to admit aliens who arrive in United States with defective visas under specified conditions.

Subsec. (d). Pub. L. 89-236 repealed subsec. (d) which imposed restrictions on exercise of Attorney General's discretion to admit aliens arriving with defective visas.

Subsec. (e). Pub. L. 89-236 repealed subsec. (e) which required every alien making application for admission as an immigrant to present the documents required under regulations issued by Attorney General.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-212 effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94-571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following