exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

(June 27, 1952, ch. 477, title II, ch. 9, § 290, 66 Stat. 234; Pub. L. 100–525, § 9(q), Oct. 24, 1988, 102 Stat. 2621; Pub. L. 104–208, div. C, title III, § 308(d)(4)(M), title IV, § 414(a), Sept. 30, 1996, 110 Stat. 3009–618, 3009–669.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 308(d)(4)(M), substituted ''admitted or denied admission to the United States'' for ''admitted to the United States, or excluded therefrom'' in two places.

Subsec. (c). Pub. L. 104–208, § 414(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Health and Human Services shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.''

1988—Subsec. (c). Pub. L. 100–525 substituted ''Secretary of Health and Human Services'' for ''Federal Security Administrator'' and ''The Secretary'' for ''The Administrator''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(M) 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.

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.

REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS

Pub. L. 104–208, div. C, title IV, § 414(b), Sept. 30, 1996, 110 Stat. 3009–669, as amended by Pub. L. 108–156, § 3(d), Dec. 3, 2003, 117 Stat. 1945, directed the Commissioner of Social Security to transmit to the Secretary of Homeland Security, by not later than 1 year after Sept. 30, 1996, a report on the extent to which social security account numbers and cards were used by aliens for fraudulent purposes.

§ 1361. Burden of proof upon alien

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not inadmissible under any provision of this chapter. In any removal proceeding under part IV of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law.

(June 27, 1952, ch. 477, title II, ch. 9, § 291, 66 Stat. 234; Pub. L. 97–116, § 18(k)(1), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 104–208, div. C, title III, § 308(d)(4)(N), (e)(1)(N), (g)(9)(A), Sept. 30, 1996, 110 Stat. 3009–618, 3009–619, 3009–624.)

AMENDMENTS

1996—Pub. L. 104–208, § 308(g)(9)(A), substituted ''part IV'' for ''Part V''.

Pub. L. 104–208, § 308(e)(1)(N), substituted ''removal'' for ''deportation''.

Pub. L. 104–208, § 308(d)(4)(N), substituted ''inadmissible'' for ''subject to exclusion'' in two places.

1981—Pub. L. 97–116 substituted ''immigrant, special immigrant, immediate relative, or refugee'' for ''quota immigrant, or nonquota immigrant''.

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 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.

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.

§ 1362. Right to counsel

In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

(June 27, 1952, ch. 477, title II, ch. 9, § 292, 66 Stat. 235; Pub. L. 104–208, div. C, title III, §§ 308(d)(4)(O), 371(b)(9), Sept. 30, 1996, 110 Stat. 3009–619, 3009–645.)

AMENDMENTS

1996—Pub. L. 104–208, § 371(b)(9), substituted ''an immigration judge'' for ''a special inquiry officer''.

Pub. L. 104–208, § 308(d)(4)(O), substituted ''removal'' for ''exclusion or deportation'' in two places.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(O) of Pub. L. 104–208 effective, with certain transitional provisions, on the