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 immigrants 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 immediately 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 ⅓ 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 ⅓ 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 ⅙ 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 per centum, 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 nonquota 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 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.

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 nonquota 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 related 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-petitioners 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 entitled 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 nonimmigrant 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 child[2]) 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 admitted[3] 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

[2] So in original. Probably should be ''child's''.

[3] So 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-

[4] So 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 subsec. (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 sheepherders upon approval by the Attorney General, certification to the Secretary of State by the Attorney General of names and addresses of sheepherders 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 subsecs. (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 preference 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 estimated 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 ''otherwide''.

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 or 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 Guidelines 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 reapplications 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, and 2001'', was executed by making the substitution for ''1997, 1998, 1999, 2000, 2001, 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 section[1] 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 application 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 subsecs. (a) to (d) for former subsecs. (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-

dure 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

paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds

(A) In general

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

(B) Waiver authorized

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g) of this section.

(C) Exception from immunization requirement for adopted children 10 years of age or younger

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in section 1101(b)(1)(F) of this title, and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title,

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed

chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) Waiver authorized

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

(G) Foreign government officials who have committed particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

(H) Significant traffickers in persons

(i) In general

Any alien who is listed in a report submitted pursuant to section 7108(b) of title 22, or who the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

(ii) Beneficiaries of trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) Exception for certain sons and daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) Money laundering

Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3) Security and related grounds

(A) In general

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) Terrorist activities

(i) In general

Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

(ii) Exception

Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) "Terrorist activity" defined

As used in this chapter, the term ''terrorist activity'' means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) "Engage in terrorist activity" defined

As used in this chapter, the term ''engage in terrorist activity'' means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) "Representative" defined

As used in this paragraph, the term ''representative'' includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) "Terrorist organization" defined

As used in this section, the term ''terrorist organization'' means an organization—

(I) designated under section 1189 of this title;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) Foreign policy

(i) In general

An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) Exception for officials

An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) Exception for other aliens

An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

(iv) Notification of determinations

If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) Immigrant membership in totalitarian party

(i) In general

Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) Exception for involuntary membership

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) Exception for past membership

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a

foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) Exception for close family members

The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

(i) Participation in Nazi persecutions

Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) Participation in genocide

Any alien who ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, is inadmissible.

(iii) Commission of acts of torture or extrajudicial killings

Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) Association with terrorist organizations

Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;

(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) Certain aliens subject to special rule

For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) Professional athletes

(I) In general

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) "Professional athlete" defined

For purposes of subclause (I), the term ''professional athlete'' means an individual who is employed as an athlete by—

(aa) 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

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

(iv) Long delayed adjustment applicants

A certification made under clause (i) with respect to an individual whose petition is covered by section 1154(j) of this title shall remain valid with respect to a new job accepted by the individual after 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 certification was issued.

(B) Unqualified physicians

An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers

Subject to subsection (r) of this section, any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not sub-

ject to further administrative or judicial review.

(D) Application of grounds

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

(6) Illegal entrants and immigration violators

(A) Aliens present without admission or parole

(i) In general

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women and children

Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) Failure to attend removal proceeding

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) Misrepresentation

(i) In general

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

(II) Exception

In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

(D) Stowaways

Any alien who is a stowaway is inadmissible.

(E) Smugglers

(i) In general

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

(F) Subject of civil penalty

(i) In general

An alien who is the subject of a final order for violation of section 1324c of this title is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

(G) Student visa abusers

An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of

this title and who violates a term or condition of such status under section 1184(*l*)[1] of this title is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) Documentation requirements

(A) Immigrants

(i) In general

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and 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 under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title,

is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (k) of this section.

(B) Nonimmigrants

(i) In general

Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) General waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

(iii) Guam visa waiver

For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (*l*) of this section.

(iv) Visa waiver program

For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

(8) Ineligible for citizenship

(A) In general

Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) Draft evaders

Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) Aliens previously removed

(A) Certain aliens previously removed

(i) Arriving aliens

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens

Any alien not described in clause (i) who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) Aliens unlawfully present

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e)[2] of this title) prior to the commencement of proceedings under section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and

[1] See References in Text note below.

[2] So in original. Probably should be a reference to section 1229c of this title.

who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(ii) Construction of unlawful presence

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) Asylees

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) Family unity

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) Battered women and children

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if ''violation of the terms of the alien's nonimmigrant visa'' were substituted for ''unlawful entry into the United States'' in subclause (III) of that paragraph.

(V) Victims of a severe form of trafficking in persons

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of title 22) was at least one central reason for the alien's unlawful presence in the United States.

(iv) Tolling for good cause

In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver

The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) Aliens unlawfully present after previous immigration violations

(i) In general

Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) Miscellaneous

(A) Practicing polygamists

Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) Guardian required to accompany helpless alien

Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or phys-

ical disability, or infancy pursuant to section 1222(c) of this title, and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

(C) International child abduction

(i) In general

Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) Aliens supporting abductors and relatives of abductors

Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) Exceptions

Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) Unlawful voters

(i) In general

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) Exception

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) Former citizens who renounced citizenship to avoid taxation

Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) Notices of denials

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a) of this section, the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or adjustment[3] of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a) of this section.

(c) Repealed. Pub. L. 104–208, div. C, title III, § 304(b), Sept. 30, 1996, 110 Stat. 3009–597

(d) Temporary admission of nonimmigrants

(1) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(S) of this title. The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(S) of this title, if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 1101(a)(15)(S) of this title for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 1101(a)(15)(S) of this title.

(2) Repealed. Pub. L. 101–649, title VI, § 601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

[3] So in original. Probably should be preceded by "ineligible for".

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1223(c) of this title.

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title.

(6) Repealed. Pub. L. 101–649, title VI, § 601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

(7) The provisions of subsection (a) of this section (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United

States of the aliens described in this proviso.[4] Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 1231(c) of this title.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

(9), (10) Repealed. Pub. L. 101–649, title VI, § 601(d)(2)(A), Nov. 29, 1990, 104 Stat. 5076.

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F) of this section—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title, and

(B) in the case of an alien seeking admission or adjustment of status under section 1151(b)(2)(A) of this title or under section 1153(a) of this title,

if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) of this section shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 1101(a)(15)(T) of this title, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's[5] discretion, may waive the application of—

(i) subsection (a)(1) of this section; and

(ii) any other provision of subsection (a) of this section (excluding paragraphs (3), (4), (10)(C), and (10(E))[6] if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title. The Secretary of Homeland Security, in the Attorney General's[5] discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(U) of this title, if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(e) Educational visitor status; foreign residence requirement; waiver

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(H) or section 1101(a)(15)(L) of this title until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the

[4] So in original.

[5] So in original. Probably should be ''Secretary's''.

[6] So in original. Probably should be ''(10)(E))''.

country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 1184(*l*) of this title: *And provided further*, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Suspension of entry or imposition of restrictions by President

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) Bond and conditions for admission of alien inadmissible on health-related grounds

The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) of this section in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or

(3) subsection (a)(1)(A)(iii) of this section in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E)

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection

in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i) Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j) Limitation on immigration of foreign medical graduates

(1) The additional requirements referred to in section 1101(a)(15)(J) of this title for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English, (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).

(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a non-

immigrant under section 1101(a)(15)(H)(i)(b) of this title unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) Omitted.

(k) Attorney General's discretion to admit otherwise inadmissible aliens who possess immigrant visas

Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a) of this section, who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

***(l)* Guam; waiver of requirements for nonimmigrant visitors; conditions of waiver; acceptance of funds from Guam**

(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior, after consultation with the Governor of Guam, jointly determine that—

(A) an adequate arrival and departure control system has been developed on Guam, and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the Government of Guam such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

(m) Requirements for admission of nonimmigrant nurses

(1) The qualifications referred to in section 1101(a)(15)(H)(i)(c) of this title, with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 1101(a)(15)(H)(i)(c) of this title, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 1101(a)(15)(H)(i)(c) of this title, notice of the filing has been provided by the facility to the bargaining representative of the registered

nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii) The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(c) of this title that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii) The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(c) of this title—

(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II) transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before November 12, 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A)—

(i) shall expire on the date that is the later of—

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 1101(a)(15)(H)(i)(c) of this title of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii) shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 1101(a)(15)(H)(i)(c) of this title and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subpara-

graph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding $250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 1101(a)(15)(H)(i)(c) of this title shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 1101(a)(15)(H)(i)(c) of this title in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 1101(a)(15)(H)(i)(c) of this title to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this subsection and section 1101(a)(15)(H)(i)(c) of this title, the term ''facility'' means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 254e of title 42).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title [42 U.S.C. 1395c et seq.] is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], is not less than 28 percent of the total number of such hospital's acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term ''lay off'', with respect to a worker—

(A) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee's or an employer's rights under a collective bargaining agreement or other employment contract.

(n) Labor condition application

(1) No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the application, and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in

the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before[7] by an H–1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after October 21, 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H–1B nonimmigrants sought in the application are exempt H–1B nonimmigrants.

(F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H–1B-dependent employer) where—

(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H–1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 1153(b)(1) of this title.

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101(a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(2)(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the

[7] So in original.

matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H–1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 1184(c)(1) of this title, for which a fee is imposed under section 1184(c)(9) of this title, to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a full-time employee on the petition filed under section 1184(c)(1) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a part-time employee on the petition filed under section 1184(c)(1) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment

with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III) In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 1184(c)(1) of this title, with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV) This clause does not apply to a failure to pay wages to an H–1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H–1B nonimmigrant an established salary practice of the employer, under which the employer pays to H–1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this chapter to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H–1B-dependent employer places a nonexempt H–1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H–1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after October 21, 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of[8] disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary

[8] So in original. Probably should be "or".

of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5.

(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this chapter of[8] any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses[9] (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses[9] (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5 within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 1324b of this title), or any other Act.

(3)(A) For purposes of this subsection, the term ''H–1B-dependent employer'' means an employer that—

(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H–1B nonimmigrants;

(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or

(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—

(i) the term ''exempt H–1B nonimmigrant'' means an H–1B nonimmigrant who—

[9] So in original. Probably should be ''clause''.

(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or

(II) has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term ''nonexempt H–1B nonimmigrant'' means an H–1B nonimmigrant who is not an exempt H–1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H–1B nonimmigrants, exempt H–1B nonimmigrants shall not be taken into account during the longer of—

(I) the 6-month period beginning on October 21, 1998; or

(II) the period beginning on October 21, 1998, and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26 shall be treated as a single employer.

(4) For purposes of this subsection:

(A) The term ''area of employment'' means the area within normal commuting distance of the worksite or physical location where the work of the H–1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an application with respect to one or more H–1B nonimmigrants by an employer, the employer is considered to ''displace'' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C) The term ''H–1B nonimmigrant'' means an alien admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title.

(D)(i) The term ''lays off'', with respect to a worker—

(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(E) The term ''United States worker'' means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1157 of this title, is granted asylum under section 1158 of this title, or is an immigrant otherwise authorized, by this chapter or by the Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer's failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner's misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a resume or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form

of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation or $5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 1154 or 1184(c) of this title—

(I) during a period of not more than 1 year; or

(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(*o*) Omitted

(p) Computation of prevailing wage level

(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section in the case of an employee of—

(A) an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II) of this section) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level

(q) Academic honoraria

Any alien admitted under section 1101(a)(15)(B) of this title may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) of this section and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r) Exception for certain alien nurses

Subsection (a)(5)(C) of this section shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) of this section by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—

(A) in which the language of instruction was English;

(B) located in a country—

(i) designated by such commission not later than 30 days after November 12, 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or

(ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection; and

(C)(i) which was in operation on or before November 12, 1999; or

(ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection.

(s) Consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge

In determining whether an alien described in subsection (a)(4)(C)(i) of this section is inadmissible under subsection (a)(4) of this section or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4) of this section, the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 1641(c) of this title.

(t)[10] Nonimmigrant professionals; labor attestations

(1) No alien may be admitted or provided status as a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation; and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the attestation—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought; or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title are sought.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer's principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title within 7 days of the date of the filing of the attestation.

(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for

[10] So in original. Two subsecs. (t) have been enacted.

notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment

with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(IV) This clause does not apply to a failure to pay wages to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title an established salary practice of the employer, under which the employer pays to nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this chapter to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 1324b of this title), or any other Act.

(4) For purposes of this subsection:

(A) The term ''area of employment'' means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title by an employer, the employer is considered to ''displace'' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)(i) The term ''lays off'', with respect to a worker—

(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(D) The term ''United States worker'' means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1157 of this title, is granted asylum under section 1158 of this title, or is an immigrant otherwise authorized, by this chapter or by the Secretary of Homeland Security, to be employed.

(t)[11] Foreign residence requirement

(1) Except as provided in paragraph (2), no person admitted under section 1101(a)(15)(Q)(ii)(I) of this title, or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this chapter until it is established that such person has resided and been physically present in the person's country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

(A) departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

(B) the admission of the alien is in the public interest or the national interest of the United States.

(June 27, 1952, ch. 477, title II, ch. 2, § 212, 66 Stat. 182; July 18, 1956, ch. 629, title III, § 301 (a), 70 Stat. 575; Pub. L. 85–508, § 23, July 7, 1958, 72 Stat. 351; Pub. L. 86–3, § 20(b), Mar. 18, 1959, 73 Stat. 13; Pub. L. 86–648, § 8, July 14, 1960, 74 Stat. 505; Pub. L. 87–256, § 109(c), Sept. 21, 1961, 75 Stat. 535; Pub. L. 87–301, §§ 11–15, Sept. 26, 1961, 75 Stat. 654, 655; Pub. L. 89–236, §§ 10, 15, Oct. 3, 1965, 79 Stat. 917, 919; Pub. L. 91–225, § 2, Apr. 7, 1970, 84 Stat. 116; Pub. L. 94–484, title VI, § 601(a), (c), (d), Oct. 12, 1976, 90 Stat. 2300, 2301; Pub. L. 94–571, §§ 5, 7(d), Oct. 20, 1976, 90 Stat. 2705, 2706; Pub. L. 95–83, title III, § 307(q)(1), (2), Aug. 1, 1977, 91 Stat. 394; Pub. L. 95–549, title I, §§ 101, 102, Oct. 30, 1978, 92 Stat. 2065; Pub. L. 96–70, title III, § 3201(b), Sept. 27, 1979, 93 Stat. 497; Pub. L. 96–212, title II, § 203(d), (f), Mar. 17, 1980, 94 Stat. 107; Pub. L. 96–538, title IV, § 404, Dec. 17, 1980, 94 Stat. 3192; Pub. L. 97–116, §§ 4, 5(a)(1), (2), (b), 18(e), Dec. 29, 1981, 95 Stat. 1611, 1612, 1620; Pub. L. 98–454, title VI, § 602[(a)], Oct. 5, 1984, 98 Stat. 1737; Pub. L. 98–473, title II, § 220(a), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–396, § 14(a), Aug. 27, 1986, 100 Stat. 842; Pub. L. 99–570, title I, § 1751(a), Oct. 27, 1986, 100 Stat. 3207–47; Pub. L. 99–639, § 6(a), Nov. 10, 1986, 100 Stat. 3543; Pub. L. 99–653, § 7(a), Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–204, title VIII, § 806(c), Dec. 22, 1987, 101 Stat. 1399; Pub. L. 100–525, §§ 3(1)(A), 7(c)(1), (3), 8(f), 9(i), Oct. 24, 1988, 102 Stat. 2614, 2616, 2617, 2620; Pub. L. 100–690, title VII, § 7349(a), Nov. 18, 1988, 102 Stat. 4473; Pub. L. 101–238, § 3(b), Dec. 18, 1989, 103 Stat. 2100; Pub. L. 101–246, title I, § 131(a), (c), Feb. 16, 1990, 104 Stat. 31; Pub. L. 101–649, title I, § 162(e)(1), (f)(2)(B), title II, §§ 202(b), 205(c)(3), title V, §§ 511(a), 514(a), title VI, § 601(a), (b), (d), Nov. 29, 1990, 104 Stat. 5011, 5012, 5014, 5020, 5052, 5053, 5067, 5075; Pub. L. 102–232, title III, §§ 302(e)(6), (9), 303(a)(5)(B), (6), (7)(B), 306(a)(10), (12), 307(a)–(g), 309(b)(7), Dec. 12, 1991, 105 Stat. 1746, 1747, 1751, 1753–1755, 1759; Pub. L. 103–43, title XX, § 2007(a), June 10, 1993, 107 Stat. 210; Pub. L. 103–317, title V, § 506(a), Aug. 26, 1994, 108 Stat. 1765; Pub. L. 103–322, title XIII, § 130003(b)(1), Sept. 13, 1994, 108 Stat. 2024; Pub. L. 103–416, title II, §§ 203(a), 219(e), (z)(1), (5), 220(a), Oct. 25, 1994, 108 Stat. 4311, 4316, 4318, 4319; Pub. L. 104–132, title IV, §§ 411, 412, 440(d), Apr. 24, 1996, 110 Stat. 1268, 1269, 1277; Pub. L. 104–208, div. C, title I, § 124(b)(1), title III, §§ 301(b)(1), (c)(1), 304(b), 305(c), 306(d), 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H), 322(a)(2)(B), 341(a), (b), 342(a), 343, 344(a), 345(a), 346(a), 347(a), 348(a), 349, 351(a), 352(a), 355, title V, § 531(a), title VI, §§ 602(a), 622(b), 624(a), 671(e)(3), Sept. 30, 1996, 110 Stat. 3009–562, 3009–576, 3009–578, 3009–597, 3009–607, 3009–612, 3009–616, 3009–619 to 3009–622, 3009–625, 3009–629, 3009–635 to 3009–641, 3009–644, 3009–674, 3009–689, 3009–695, 3009–698, 3009–723; Pub. L. 105–73, § 1, Nov. 12, 1997, 111 Stat. 1459; Pub. L. 105–277, div. C, title IV, §§ 412(a)–(c), 413(a)–(e)(1), (f), 415(a), 431(a), div. G, subdiv. B, title XXII, § 2226(a), Oct. 21, 1998, 112 Stat. 2681–642 to 2681–651, 2681–654, 2681–658, 2681–820; Pub. L. 105–292, title VI, § 604(a), Oct. 27, 1998, 112 Stat. 2814; Pub. L. 106–95, §§ 2(b), 4(a), Nov. 12, 1999, 113 Stat. 1312, 1317; Pub. L. 106–120, title VIII, § 809, Dec. 3, 1999, 113 Stat. 1632; Pub. L. 106–313, title I, §§ 106(c)(2), 107(a), Oct. 17, 2000, 114 Stat. 1254, 1255; Pub. L. 106–386, div. A, §§ 107(e)(3), 111(d), div. B, title V, §§ 1505(a), (c)(1), (d)–(f), 1513(e), Oct. 28, 2000, 114 Stat. 1478, 1485, 1525, 1526, 1536; Pub. L. 106–395, title II, § 201(b)(1), (2), Oct. 30, 2000, 114 Stat. 1633, 1634; Pub. L. 106–396, title I, § 101(b)(1), Oct. 30, 2000, 114 Stat. 1638; Pub. L. 107–56, title IV, § 411(a), title X, § 1006(a), Oct. 26, 2001, 115 Stat. 345, 394; Pub. L. 107–150, § 2(a)(2), Mar. 13, 2002, 116 Stat. 74; Pub. L. 107–273, div. C, title I, § 11018(c), Nov. 2, 2002, 116 Stat. 1825; Pub. L. 108–77, title IV, § 402(b), (c), Sept. 3, 2003, 117 Stat. 940, 946; Pub. L. 108–193, §§ 4(b)(4), 8(a)(2), Dec. 19, 2003, 117 Stat. 2879, 2886; Pub. L. 108–447, div. J, title IV, §§ 422(a), 423, 424(a)(1), (b), Dec. 8, 2004, 118 Stat. 3353–3355; Pub. L. 108–449, § 1(b)(2), Dec. 10, 2004, 118 Stat. 3470; Pub. L. 108–458, title V, §§ 5501(a), 5502(a), 5503, Dec. 17, 2004, 118 Stat. 3740, 3741; Pub. L. 109–13, div. B, title I, §§ 103(a)–(c), 104, title V, § 501(d), May 11, 2005, 119 Stat. 306–309, 322; Pub. L. 109–162, title VIII, § 802, Jan. 5, 2006, 119 Stat. 3054; Pub. L. 109–271, § 6(b),

[11] So in original. Two subsecs. (t) have been enacted.

Aug. 12, 2006, 120 Stat. 762; Pub. L. 110–161, div. J, title VI, § 691(a), (c), Dec. 26, 2007, 121 Stat. 2364, 2365.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 3(a) of the Torture Victim Protection Act of 1991, referred to in subsec. (a)(3)(E)(iii)(II), is section 3(a) of Pub. L. 102–256, which is set out as a note under section 1350 of Title 28, Judiciary and Judicial Procedure.

Section 301 of the Immigration Act of 1990, referred to in subsec. (a)(6)(E)(ii), (9)(B)(iii)(III), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.

Section 112 of the Immigration Act of 1990, referred to in subsec. (a)(6)(E)(ii), is section 112 of Pub. L. 101–649, which is set out as a note under section 1153 of this title.

Section 1184(*l*) of this title, referred to in subsec. (a)(6)(G), probably means the subsec. (*l*) of section 1184, which relates to nonimmigrant elementary and secondary school students and was added by Pub. L. 104–208, div. C, title VI, § 625(a)(1), Sept. 30, 1996, 110 Stat. 3009–699, and redesignated subsec.(m) of section 1184 by Pub. L. 106–386, div. A, § 107(e)(2)(A), Oct. 28, 2000, 114 Stat. 1478.

The Social Security Act, referred to in subsec. (m)(6)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Part A of title XVIII of the Act is classified generally to part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Subsection (j)(3), which required the Director of the United States Information Agency to transmit an annual report to Congress on aliens submitting affidavits described in subsection (j)(1)(E) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 193 of House Document No. 103–7.

AMENDMENTS

2007—Subsec. (a)(3)(B)(ii). Pub. L. 110–161, § 691(c), substituted ''Subclause (IX)'' for ''Subclause (VII)'' in introductory provisions.

Subsec. (d)(3)(B)(i). Pub. L. 110–161, § 691(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(iv)(VI) of this section shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(vi)(III) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 1229a of this title.''

2006—Subsec. (a)(4)(C)(i)(I). Pub. L. 109–271, § 6(b)(1)(A)(i), which directed the amendment of subsec. (a)(4)(C)(i)(II) by substituting a semicolon for '', or'', was executed to subsec. (a)(4)(C)(i)(I), to reflect the probable intent of Congress. The quoted matter did not appear in subsec. (a)(4)(C)(i)(II).

Subsec. (a)(4)(C)(i)(III). Pub. L. 109–271, § 6(b)(1)(A)(ii), added subcl. (III).

Subsec. (a)(6)(A)(ii)(I). Pub. L. 109–271, § 6(b)(1)(B), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154(a)(1) of this title,''.

Subsec. (a)(9)(B)(iii)(V). Pub. L. 109–162, § 802(a), added subcl. (V).

Subsec. (a)(9)(C)(ii). Pub. L. 109–271, § 6(b)(1)(C), substituted ''the Secretary of Homeland Security has consented to the alien's reapplying for admission.'' for ''the Attorney General has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of subsection (a)(9)(C)(i) of this section in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 1154(a)(1)(A) of this title, or classification under clause (ii), (iii), or (iv) of section 1154(a)(1)(B) of this title, in any case in which there is a connection between—

''(1) the alien's having been battered or subjected to extreme cruelty; and

''(2) the alien's—

''(A) removal;

''(B) departure from the United States;

''(C) reentry or reentries into the United States; or

''(D) attempted reentry into the United States.''

Subsec. (a)(9)(C)(iii). Pub. L. 109–271, § 6(b)(1)(C), added subpar. (iii).

Subsec. (d)(13), (14). Pub. L. 109–162, § 802(b), substituted ''Secretary of Homeland Security'' for ''Attorney General'' wherever appearing.

Subsec. (g)(1)(C). Pub. L. 109–271, § 6(b)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154(a)(1)(B) of this title;''.

Subsec. (h)(1)(C). Pub. L. 109–271, § 6(b)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the alien qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154(a)(1)(B) of this title; and''.

Subsec. (i)(1). Pub. L. 109–271, § 6(b)(4), substituted ''a VAWA self-petitioner'' for ''an alien granted classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154(a)(1)(B) of this title''.

2005—Subsec. (a)(3)(B)(i). Pub. L. 109–13, § 103(a), reenacted heading without change and amended first sentence of cl. (i) generally, substituting general provisions relating to inadmissibility of aliens engaging in terrorist activities for former provisions relating to inadmissibility of any alien who had engaged in a terrorist activity, any alien who a consular officer or the Attorney General knew or reasonably believed had engaged in terrorist activity, any alien who had incited terrorist activity, any alien who was a representative of a foreign terrorist organization or group that had publicly endorsed terrorist acts, any alien who was a member of a foreign terrorist organization, any alien who had used the alien's position of prominence to endorse terrorist activity, and any alien who was the spouse or child of an alien who had been found inadmissible, if the activity causing the alien to be found inadmissible had occurred within the last 5 years.

Subsec. (a)(3)(B)(iv). Pub. L. 109–13, § 103(b), reenacted heading without change and amended text of cl. (iv) generally, substituting provisions defining the term ''engage in terrorist activity'' in subcls. (I) to (VI), including provisions relating to demonstration of certain knowledge by clear and convincing evidence, for provisions defining the term ''engage in terrorist activity''

in somewhat similar subcls. (I) to (VI) which did not include provisions relating to demonstration of certain knowledge by clear and convincing evidence.

Subsec. (a)(3)(B)(vi). Pub. L. 109–13, § 103(c), amended heading and text of cl. (vi) generally. Prior to amendment, text read as follows: ''As used in clause (i)(VI) and clause (iv), the term 'terrorist organization' means an organization—

''(I) designated under section 1189 of this title;

''(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to further terrorist activity; or

''(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).''

Subsec. (d)(3). Pub. L. 109–13, § 104, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (t). Pub. L. 109–13, § 501(d)(1), inserted ''or section 1101(a)(15)(E)(iii) of this title'' after ''section 1101(a)(15)(H)(i)(b1) of this title'' wherever appearing.

Subsec. (t)(3)(C)(i)(II), (ii)(II), (iii)(II). Pub. L. 109–13, § 501(d)(2), substituted ''1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii)'' for ''or 1101(a)(15)(H)(i)(b1)''.

2004—Subsec. (a)(2)(G). Pub. L. 108–458, § 5502(a), amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: ''Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 6402 of title 22, and the spouse and children, if any, are inadmissible.''

Subsec. (a)(3)(E). Pub. L. 108–458, § 5501(a)(3), which directed substitution of ''Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing'' for ''Participants in nazi persecution or genocide'' in heading, was executed by making the substitution for ''Participants in Nazi persecutions or genocide'' to reflect the probable intent of Congress.

Subsec. (a)(3)(E)(ii). Pub. L. 108–458, § 5501(a)(1), substituted ''ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, is inadmissible'' for ''has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible''.

Subsec. (a)(3)(E)(iii). Pub. L. 108–458, § 5501(a)(2), added cl. (iii).

Subsec. (d)(3)(A), (B). Pub. L. 108–458, § 5503, substituted ''and clauses (i) and (ii) of paragraph (3)(E)'' for ''and (3)(E)''.

Subsec. (n)(1)(E)(ii). Pub. L. 108–447, § 422(a), struck out ''October 1, 2003,'' before ''by an H–1B-dependent employer''.

Subsec. (n)(2)(G). Pub. L. 108–447, § 424(a)(1), added subpar. (G).

Subsec. (n)(2)(H), (I). Pub. L. 108–447, § 424(b), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (p). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s), could not be executed because of the previous temporary redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.

Subsec. (p)(3), (4). Pub. L. 108–447, § 423, added pars. (3) and (4).

Subsec. (s). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s), could not be executed because of the previous redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.

Subsec. (t). Pub. L. 108–449, § 1(b)(2)(B), added subsec. (t) relating to foreign residence requirement.

2003—Subsec. (d)(13). Pub. L. 108–193, § 8(a)(2), redesignated par. (13), relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title, as (14).

Subsec. (d)(13)(A). Pub. L. 108–193, § 4(b)(4)(A), inserted '', except that the ground for inadmissibility described in subsection (a)(4) of this section shall not apply with respect to such a nonimmigrant'' before period at end.

Subsec. (d)(13)(B)(i). Pub. L. 108–193, § 4(b)(4)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''paragraphs (1) and (4) of subsection (a) of this section; and''.

Subsec. (d)(13)(B)(ii). Pub. L. 108–193, § 4(b)(4)(B)(ii), substituted ''subsection (a) of this section'' for ''such subsection'' and inserted ''(4),'' after ''(3),''.

Subsec. (d)(14). Pub. L. 108–193, § 8(a)(2), redesignated par. (13), relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title, as (14).

Subsec. (p). Pub. L. 108–77, §§ 107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (p)(1). Pub. L. 108–77, §§ 107(c), 402(c), temporarily substituted ''(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)'' for ''(n)(1)(A)(i)(II) and (a)(5)(A)''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (s). Pub. L. 108–77, §§ 107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (t). Pub. L. 108–77, §§ 107(c), 402(b)(2), temporarily added subsec. (t). See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (a)(4)(C)(ii). Pub. L. 107–150 substituted ''(and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section)'' for ''(including any additional sponsor required under section 1183a(f) of this title)''.

Subsec. (e). Pub. L. 107–273 substituted ''section 1184(*l*)'' for ''section 1184(k)''.

2001—Subsec. (a)(2)(I). Pub. L. 107–56, § 1006(a), added subpar. (I).

Subsec. (a)(3)(B)(i)(II). Pub. L. 107–56, § 411(a)(1)(C), substituted ''clause (iv)'' for ''clause (iii)''.

Subsec. (a)(3)(B)(i)(IV). Pub. L. 107–56, § 411(a)(1)(A)(i), amended subcl. (IV) generally. Prior to amendment, subcl. (IV) read as follows: ''is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 1189 of this title, or''.

Subsec. (a)(3)(B)(i)(V). Pub. L. 107–56, § 411(a)(1)(A)(ii), inserted ''or'' after ''section 1189 of this title,''.

Subsec. (a)(3)(B)(i)(VI), (VII). Pub. L. 107–56, § 411(a)(1)(A)(iii), which directed addition of subcls. (VI) and (VII) at end of cl. (i), was executed by making the addition after subcl. (V) and before concluding provisions of cl. (i) to reflect the probable intent of Congress.

Subsec. (a)(3)(B)(ii). Pub. L. 107–56, § 411(a)(1)(D), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (a)(3)(B)(iii). Pub. L. 107–56, § 411(a)(1)(E)(i), inserted ''it had been'' before ''committed in the United States'' in introductory provisions.

Pub. L. 107–56, § 411(a)(1)(B), redesignated cl. (ii) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (a)(3)(B)(iii)(V)(b). Pub. L. 107–56, § 411(a)(1)(E)(ii), substituted ", firearm, or other weapon or dangerous device" for "or firearm".

Subsec. (a)(3)(B)(iv). Pub. L. 107–56, § 411(a)(1)(F), reenacted heading without change and amended text of cl. (iv) generally. Prior to amendment, text read as follows: "As used in this chapter, the term 'engage in terrorist activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

"(I) The preparation or planning of a terrorist activity.

"(II) The gathering of information on potential targets for terrorist activity.

"(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.

"(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

"(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity."

Pub. L. 107–56, § 411(a)(1)(B), redesignated cl. (iii) as (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(3)(B)(v). Pub. L. 107–56, § 411(a)(1)(B), redesignated cl. (iv) as (v).

Subsec. (a)(3)(B)(vi). Pub. L. 107–56, § 411(a)(1)(G), added cl. (vi).

Subsec. (a)(3)(F). Pub. L. 107–56, § 411(a)(2), added subpar. (F).

2000—Subsec. (a)(2)(H). Pub. L. 106–386, § 111(d), added subpar. (H).

Subsec. (a)(5)(A)(iv). Pub. L. 106–313, § 106(c)(2), added cl. (iv).

Subsec. (a)(6)(C)(ii). Pub. L. 106–395, § 201(b)(2), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible."

Subsec. (a)(7)(B)(iv). Pub. L. 106–396 struck out "pilot" before "program" in heading and text.

Subsec. (a)(9)(C)(ii). Pub. L. 106–386, § 1505(a), inserted at end "The Attorney General in the Attorney General's discretion may waive the provisions of subsection (a)(9)(C)(i) of this section in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 1154(a)(1)(A) of this title, or classification under clause (ii), (iii), or (iv) of section 1154(a)(1)(B) of this title, in any case in which there is a connection between—" and added subcls. (1) and (2).

Subsec. (a)(10)(D). Pub. L. 106–395, § 201(b)(1), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible."

Subsec. (d)(13). Pub. L. 106–386, § 1513(e), added par. (13) relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title.

Pub. L. 106–386, § 107(e)(3), added par. (13) relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title.

Subsec. (g)(1)(C). Pub. L. 106–386, § 1505(d), added subpar. (C).

Subsec. (h)(1)(C). Pub. L. 106–386, § 1505(e), added subpar. (C).

Subsec. (i)(1). Pub. L. 106–386, § 1505(c)(1), inserted before period at end "or, in the case of an alien granted classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154(a)(1)(B) of this title, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child".

Subsec. (n)(1)(E)(ii). Pub. L. 106–313, § 107(a), substituted "October 1, 2003" for "October 1, 2001".

Subsec. (p). Pub. L. 106–386, § 1505(f), added subsec. (p) relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge.

1999—Subsec. (a)(2)(C). Pub. L. 106–120 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible."

Subsec. (a)(5)(C). Pub. L. 106–95, § 4(a)(2), substituted "Subject to subsection (r) of this section, any alien who seeks" for "Any alien who seeks" in introductory provisions.

Subsec. (m). Pub. L. 106–95, § 2(b), amended subsec. (m) generally, adding provisions providing that no more than 33 percent of a facility's workforce may be nonimmigrant aliens and making issuance of visas dependent upon State populations, and revising period of admission from a maximum of 6 years to 3 years.

Subsec. (r). Pub. L. 106–95, § 4(a)(1), added subsec. (r).

1998—Subsec. (a)(2)(G). Pub. L. 105–292 added subpar. (G).

Subsec. (a)(10)(C)(ii), (iii). Pub. L. 105–277, § 2226(a), added cls. (ii) and (iii) and struck out heading and text of former cl. (ii). Text read as follows: "Clause (i) shall not apply so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction."

Subsec. (n)(1). Pub. L. 105–277, § 412(b)(2), substituted "an H–1B nonimmigrant" for "a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title" in introductory provisions.

Pub. L. 105–277, § 412(a)(2), (3), inserted at end "The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner."

Subsec. (n)(1)(A)(i). Pub. L. 105–277, § 412(b)(2), substituted "an H–1B nonimmigrant" for "a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title" in introductory provisions.

Subsec. (n)(1)(C)(ii). Pub. L. 105–277, § 412(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "if there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment."

Subsec. (n)(1)(E) to (G). Pub. L. 105–277, § 412(a)(1), added subpars. (E) to (G).

Subsec. (n)(2)(A). Pub. L. 105–277, § 413(b)(2), substituted "Subject to paragraph (5)(A), the Secretary" for "The Secretary" in first sentence.

Subsec. (n)(2)(C). Pub. L. 105–277, § 413(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a misrepresentation of material fact in an application—

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose

such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate, and

''(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 1 year for aliens to be employed by the employer.''

Subsec. (n)(2)(E). Pub. L. 105–277, § 413(c), added subpar. (E).

Subsec. (n)(2)(F). Pub. L. 105–277, § 413(d), added subpar. (F).

Subsec. (n)(2)(G). Pub. L. 105–277, § 413(e), temporarily added subpar. (G). See Effective and Termination Dates of 1998 Amendments note below.

Subsec. (n)(2)(H). Pub. L. 105–277, § 413(f), added subpar. (H).

Subsec. (n)(3), (4). Pub. L. 105–277, § 412(b)(1), added pars. (3) and (4).

Subsec. (n)(5). Pub. L. 105–277, § 413(b)(1), added par. (5).

Subsec. (p). Pub. L. 105–277, § 415(a), added subsec. (p) relating to computation of prevailing wage level.

Subsec. (q). Pub. L. 105–277, § 431(a), added subsec. (q).

1997—Subsec. (a)(1)(A)(ii). Pub. L. 105–73, § 1(1), inserted ''except as provided in subparagraph (C),'' after ''(ii)''.

Subsec. (a)(1)(C). Pub. L. 105–73, § 1(2), added subpar. (C).

1996—Pub. L. 104–208, § 308(d)(1)(A), amended section catchline.

Subsec. (a). Pub. L. 104–208, § 308(d)(1)(C), substituted ''is inadmissible'' for ''is excludable'' wherever appearing in pars. (1) to (5), (6)(C) to (E), (G), (7), (8), (10)(A), (C)(i), (D), and (E).

Pub. L. 104–208, § 308(d)(1)(B), substituted ''aliens ineligible for visas or admission'' for ''excludable aliens'' in heading and substituted ''Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:'' for ''Except as otherwise provided in this chapter, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:'' in introductory provisions.

Subsec. (a)(1)(A)(ii) to (iv). Pub. L. 104–208, § 341(a), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (a)(2)(B). Pub. L. 104–208, § 322(a)(2)(B), struck out ''actually imposed'' after ''confinement''.

Subsec. (a)(2)(D)(i), (ii). Pub. L. 104–208, § 308(f)(1)(C), substituted ''admission'' for ''entry''.

Subsec. (a)(3)(B)(i)(I). Pub. L. 104–132, § 411(1)(A), struck out ''or'' at end.

Subsec. (a)(3)(B)(i)(II). Pub. L. 104–132, § 411(1)(B), inserted ''is engaged in or'' after ''ground to believe,''.

Subsec. (a)(3)(B)(i)(III). Pub. L. 104–208, § 342(a)(2), added subcl. (III). Former subcl. (III) redesignated (IV).

Pub. L. 104–132, § 411(1)(C), added subcl. (III).

Subsec. (a)(3)(B)(i)(IV). Pub. L. 104–208, § 355, inserted ''which the alien knows or should have known is a terrorist organization'' after ''1189 of this title,''.

Pub. L. 104–208, § 342(a)(1), redesignated subcl. (III) as (IV). Former subcl. (IV) redesignated (V).

Pub. L. 104–132, § 411(1)(C), added subcl. (IV).

Subsec. (a)(3)(B)(i)(V). Pub. L. 104–208, § 342(a)(1), redesignated subcl. (IV) as (V).

Subsec. (a)(3)(B)(iii)(III). Pub. L. 104–208, § 342(a)(3), inserted ''documentation or'' before ''identification''.

Subsec. (a)(3)(B)(iv). Pub. L. 104–132, § 411(2), added cl. (iv).

Subsec. (a)(4). Pub. L. 104–208, § 531(a), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable.''

Pub. L. 104–208, § 305(c), which directed amendment of par. (4) by substituting ''1227(a)(5)(B)'' for ''1251(a)(5)(B)'' each place it appears, could not be executed because ''1251(a)(5)(B)'' did not appear in par. (4).

Subsec. (a)(5)(A)(iii). Pub. L. 104–208, § 624(a), added cl. (iii).

Subsec. (a)(5)(C). Pub. L. 104–208, § 343(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 104–208, § 308(d)(1)(D), substituted ''inadmissibility'' for ''exclusion''.

Subsec. (a)(5)(D). Pub. L. 104–208, § 343(1), redesignated subpar. (C) as (D).

Subsec. (a)(6)(A). Pub. L. 104–208, § 301(c)(1), amended heading and text generally. Prior to amendment, text read as follows: ''Any alien who has been excluded from admission and deported and who again seeks admission within one year of the date of such deportation is excludable, unless prior to the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien's reapplying for admission.''

Subsec. (a)(6)(B). Pub. L. 104–208, § 301(c)(1), amended heading and text generally. Prior to amendment, text read as follows: ''Any alien who—

''(i) has been arrested and deported,

''(ii) has fallen into distress and has been removed pursuant to this chapter or any prior Act,

''(iii) has been removed as an alien enemy, or

''(iv) has been removed at Government expense in lieu of deportation pursuant to section 1252(b) of this title,

and (a) who seeks admission within 5 years of the date of such deportation or removal, or (b) who seeks admission within 20 years in the case of an alien convicted of an aggravated felony, is excludable, unless before the date of the alien's embarkation or reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien's applying or reapplying for admission.''

Subsec. (a)(6)(C)(i). Pub. L. 104–208, § 308(f)(1)(D), substituted ''admission'' for ''entry''.

Subsec. (a)(6)(C)(ii), (iii). Pub. L. 104–208, § 344(a), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(6)(F). Pub. L. 104–208, § 345(a)(1), amended heading and text of subpar. (F) generally. Prior to amendment, text read as follows: ''An alien who is the subject of a final order for violation of section 1324c of this title is excludable.''

Subsec. (a)(6)(G). Pub. L. 104–208, § 346(a), added subpar. (G).

Subsec. (a)(9). Pub. L. 104–208, § 301(b)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (a)(10). Pub. L. 104–208, § 301(b)(1), redesignated par. (9) as (10).

Subsec. (a)(10)(B). Pub. L. 104–208, § 308(c)(2)(B), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 1227(e) of this title, whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.''

Subsec. (a)(10)(D). Pub. L. 104–208, § 347(a), added subpar. (D).

Subsec. (a)(10)(E). Pub. L. 104–208, § 352(a), added subpar. (E).

Subsec. (b). Pub. L. 104–208, § 308(d)(1)(F), which directed amendment of par. (2) by striking ''or ineligible for entry'', was executed by striking the language in par. (1)(B) before ''or adjustment'', to reflect the probable intent of Congress and the intervening redesignation of par. (2) as par. (1)(B) by Pub. L. 104–132, § 412(1). See below.

Pub. L. 104–208, § 308(d)(1)(E), substituted ''inadmissible'' for ''excludable'' wherever appearing.

Pub. L. 104–132, § 412, designated existing provisions as par. (1), substituted ''Subject to paragraphs (2) and (3),

if'' for ''If'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, realigned margins, and added pars. (2) and (3).

Subsec. (c). Pub. L. 104–208, §304(b), struck out subsec. (c) which read as follows: ''Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181(b) of this title. This subsection shall not apply to an alien who is deportable by reason of having committed any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.''

Pub. L. 104–132, §440(d)(2), as amended by Pub. L. 104–208, §§306(d), 308(g)(1), (10)(H), substituted ''is deportable by reason of having committed any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.'' for ''has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.''

Pub. L. 104–132, §440(d)(1), substituted ''This'' for ''The first sentence of this'' in third sentence.

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

Pub. L. 104–208, §308(d)(1)(D), substituted ''inadmissibility'' for ''exclusion''.

Subsec. (d)(3). Pub. L. 104–208, §308(d)(1)(E), substituted ''inadmissible aliens'' for ''excludable aliens''.

Subsec. (d)(4). Pub. L. 104–208, §308(g)(1), substituted ''section 1223(c)'' for ''section 1228(c)''.

Subsec. (d)(5)(A). Pub. L. 104–208, §602(a), substituted ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit'' for ''for emergent reasons or for reasons deemed strictly in the public interest''.

Subsec. (d)(7). Pub. L. 104–208, §308(g)(4)(B), substituted ''section 1231(c)'' for ''section 1227(a)''.

Pub. L. 104–208, §308(e)(2)(A), substituted ''removed'' for ''deported''.

Pub. L. 104–208, §308(d)(1)(G), substituted ''denied admission'' for ''excluded from admission''.

Subsec. (d)(11). Pub. L. 104–208, §671(e)(3), inserted comma after ''(4) thereof)''.

Pub. L. 104–208, §351(a), inserted ''an individual who at the time of such action was'' after ''aided only''.

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

Subsec. (d)(12). Pub. L. 104–208, §345(a)(2), added par. (12).

Subsec. (e). Pub. L. 104–208, §622(b), inserted '', or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii),'' before ''the waiver shall be subject to''.

Subsec. (f). Pub. L. 104–208, §124(b)(1), inserted at end ''Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.''

Subsec. (g). Pub. L. 104–208, §341(b), substituted a semicolon for '', or'' at end of par. (1)(B), inserted ''in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;'' as par. (1) concluding provisions, and substituted pars. (2) and (3) for former par. (2) and concluding provisions which read as follows:

''(2) subsection (a)(1)(A)(ii) of this section in the case of any alien,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.''

Subsec. (h). Pub. L. 104–208, §348(a), inserted at end of concluding provisions ''No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.''

Pub. L. 104–208, §308(g)(10)(A), which directed substitution of ''paragraphs (1) and (2) of section 1229b(a) of this title'' for ''subsection (c) of this section'', could not be executed because the language ''subsection (c) of this section'' did not appear.

Subsec. (h)(1)(A)(i). Pub. L. 104–208, §308(f)(1)(E), substituted ''admission'' for ''entry''.

Pub. L. 104–208, §308(d)(1)(E), substituted ''inadmissible'' for ''excludable'' in two places.

Subsec. (h)(1)(B). Pub. L. 104–208, §308(d)(1)(H), substituted ''denial of admission'' for ''exclusion''.

Subsec. (i). Pub. L. 104–208, §349, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C) of this section—

''(1) in the case of an immigrant who is the spouse, parent, or son or daughter of a United States citizen or of an immigrant lawfully admitted for permanent residence, or

''(2) if the fraud or misrepresentation occurred at least 10 years before the date of the immigrant's application for a visa, entry, or adjustment of status and it is established to the satisfaction of the Attorney General that the admission to the United States of such immigrant would not be contrary to the national welfare, safety, or security of the United States.''

Subsec. (j)(1)(D). Pub. L. 104–208, §308(f)(1)(F), substituted ''admission'' for ''entry'' in introductory provisions.

Subsec. (j)(1)(D)(ii). Pub. L. 104–208, §308(f)(3)(A), substituted ''is admitted to'' for ''enters''.

Subsec. (k). Pub. L. 104–208, §308(d)(1)(E), substituted ''inadmissible'' for ''excludable''.

Pub. L. 104–208, §308(d)(1)(D), substituted ''inadmissibility'' for ''exclusion''.

Subsec. (*l*)(2)(B). Pub. L. 104–208, §308(e)(6), substituted ''removal of'' for ''deportation against''.

1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103–416, §203(a)(1), inserted ''or an attempt or conspiracy to commit such a crime'' after ''offense)''.

Subsec. (a)(2)(A)(i)(II). Pub. L. 103–416, §203(a)(2), inserted ''or attempt'' after ''conspiracy''.

Subsec. (a)(5)(C). Pub. L. 103–416, §219(z)(5), amended directory language of Pub. L. 102–232, §307(a)(6). See 1991 Amendment note below.

Subsec. (d)(1). Pub. L. 103–322 added par. (1).

Subsec. (d)(11). Pub. L. 103–416, §219(e), substituted ''voluntarily'' for ''voluntary''.

Subsec. (e). Pub. L. 103–416, §220(a), in first proviso, inserted ''(or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent)'' after ''interested

United States Government agency'' and ''except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 1184(k) of this title'' after ''public interest''.

Subsec. (h). Pub. L. 103–416, § 203(a)(3), inserted before period at end '', or an attempt or conspiracy to commit murder or a criminal act involving torture''.

Subsec. (n)(1)(A)(i). Pub. L. 103–416, § 219(z)(1), made technical correction to Pub. L. 102–232, § 303(a)(7)(B)(i). See 1991 Amendment note below.

Subsec. (*o*). Pub. L. 103–317, § 506(a), (c), temporarily added subsec. (*o*) which read as follows: ''An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

''(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

''(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

''(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;

''(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

''(C) applied for benefits under section 301(a) of the Immigration Act of 1990.''

See Effective and Termination Dates of 1994 Amendments note below.

1993—Subsec. (a)(1)(A)(i). Pub. L. 103–43 inserted at end ''which shall include infection with the etiologic agent for acquired immune deficiency syndrome,''.

1991—Subsec. (a)(1)(A)(ii)(II). Pub. L. 102–232, § 307(a)(1), inserted ''or'' at end.

Subsec. (a)(3)(A)(i). Pub. L. 102–232, § 307(a)(2), inserted ''(I)'' after ''any activity'' and ''(II)'' after ''sabotage or''.

Subsec. (a)(3)(B)(iii)(III). Pub. L. 102–232, § 307(a)(3), substituted ''a terrorist activity'' for ''an act of terrorist activity''.

Subsec. (a)(3)(C)(iv). Pub. L. 102–232, § 307(a)(5), substituted ''identity'' for ''identities''.

Subsec. (a)(3)(D)(iv). Pub. L. 102–232, § 307(a)(4), substituted ''if the immigrant'' for ''if the alien''.

Subsec. (a)(5). Pub. L. 102–232, § 302(e)(6), repealed Pub. L. 101–649, § 162(e)(1). See 1990 Amendment note below.

Subsec. (a)(5)(C). Pub. L. 102–232, § 307(a)(6), as amended by Pub. L. 103–416, § 219(z)(5), substituted ''immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title'' for ''preference immigrant aliens described in paragraph (3) or (6) of section 1153(a) of this title and to nonpreference immigrant aliens described in section 1153(a)(7) of this title''.

Subsec. (a)(6)(B). Pub. L. 102–232, § 307(a)(7), in closing provisions, substituted ''(a) who seeks'' for ''who seeks'', '', or (b) who seeks admission'' for ''(or'', and ''felony,'' for ''felony)''.

Subsec. (a)(6)(E)(ii), (iii). Pub. L. 102–232, § 307(a)(8), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(8)(B). Pub. L. 102–232, § 307(a)(9), substituted ''person'' for ''alien'' after ''Any''.

Subsec. (a)(9)(C)(i). Pub. L. 102–232, § 307(a)(10)(A), substituted ''an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is excludable until the child is surrendered to the person granted custody by that order'' for ''a court order granting custody to a citizen of the United States of a child having a lawful claim to United States citizenship, detains, retains, or withholds custody of the child outside the United States from the United States citizen granted custody, is excludable until the child is surrendered to such United States citizen''.

Subsec. (a)(9)(C)(ii). Pub. L. 102–232, § 307(a)(10)(B), substituted ''so long as the child is located in a foreign state that is a party'' for ''to an alien who is a national of a foreign state that is a signatory''.

Subsec. (a)(17). Pub. L. 102–232, § 306(a)(12), amended Pub. L. 101–649, § 514(a). See 1990 Amendment note below.

Subsec. (c). Pub. L. 102–232, § 307(b), substituted ''paragraphs (3) and (9)(C)'' for ''subparagraphs (A), (B), (C), or (E) of paragraph (3)''.

Pub. L. 102–232, § 306(a)(10), substituted ''one or more aggravated felonies and has served for such felony or felonies'' for ''an aggravated felony and has served''.

Subsec. (d)(3). Pub. L. 102–232, § 307(c), substituted ''(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii),'' for ''(3)(A),'' in two places and ''(3)(E)'' for ''(3)(D)'' in two places.

Subsec. (d)(11). Pub. L. 102–232, § 307(d), inserted ''and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof)'' after ''section 1181(b) of this title''.

Subsec. (g)(1). Pub. L. 102–232, § 307(e), substituted ''subsection (a)(1)(A)(i)'' for ''section (a)(1)(A)(i)''.

Subsec. (h). Pub. L. 102–232, § 307(f)(1), struck out ''in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or alien lawfully admitted for permanent residence'' after ''marijuana'' in introductory provisions.

Subsec. (h)(1). Pub. L. 102–232, § 307(f)(2), designated existing provisions as subpar. (A) and inserted ''in the case of any immigrant'' in introductory provisions, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, struck out ''and'' at end of cl. (i), substituted ''or'' for ''and'' at end of cl. (iii), and added subpar. (B).

Subsec. (i). Pub. L. 102–232, § 307(g), substituted ''immigrant'' and ''immigrant's'' for ''alien'' and ''alien's'', respectively, wherever appearing.

Subsec. (j)(1)(D). Pub. L. 102–232, § 309(b)(7), substituted ''United States Information Agency'' for ''International Communication Agency''.

Subsec. (j)(2). Pub. L. 102–232, § 303(a)(5)(B), added par. (2) and struck out former par. (2) which related to inapplicability of par. (1)(A) and (B)(ii)(I) requirements between effective date of subsec. and Dec. 31, 1983.

Subsec. (j)(3). Pub. L. 102–232, § 309(b)(7), substituted ''United States Information Agency'' for ''International Communication Agency''.

Subsec. (m)(2)(A). Pub. L. 102–232, § 302(e)(9), inserted, after first sentence of closing provisions, sentence relating to attestation that facility will not replace nurse with nonimmigrant for period of one year after layoff.

Subsec. (n)(1). Pub. L. 102–232, § 303(a)(7)(B)(ii), (iii), redesignated matter after first sentence of subpar. (D) as closing provisions of par. (1), substituted ''(and such accompanying documents as are necessary)'' for ''(and accompanying documentation)'', and inserted last two sentences providing for review and certification by Secretary of Labor.

Subsec. (n)(1)(A)(i). Pub. L. 102–232, § 303(a)(7)(B)(i), as amended by Pub. L. 103–416, § 219(z)(1), in introductory provisions substituted ''admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title'' for ''and to other individuals employed in the occupational classification and in the area of employment'', in closing provisions substituted ''based on the best information available'' for ''determined'', and amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the actual wage level for the occupational classification at the place of employment, or''.

Subsec. (n)(1)(A)(ii). Pub. L. 102–232, § 303(a)(6), substituted ''for such a nonimmigrant'' for ''for such aliens''.

Subsec. (n)(1)(D). Pub. L. 102–232, § 303(a)(7)(B)(iii), redesignated matter after first sentence as closing provisions of par. (1).

Subsec. (n)(2)(C). Pub. L. 102–232, § 303(a)(7)(B)(iv), substituted ''of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a misrepresentation'' for ''(or a substantial failure in the case of a condition described in subparagraph (C) or (D) of paragraph (1)) or misrepresentation''.

Subsec. (n)(2)(D). Pub. L. 102–232, § 303(a)(7)(B)(v), (vi), substituted ''If'' for ''In addition to the sanctions provided under subparagraph (C), if'' and inserted before period at end '', whether or not a penalty under subparagraph (C) has been imposed''.

1990—Subsec. (a). Pub. L. 101–649, § 601(a), amended subsec. (a) generally, decreasing number of classes of excludable aliens from 34 to 9 by broadening descriptions of such classes.

Pub. L. 101–649, § 514(a), as amended by Pub. L. 102–232, § 306(a)(12), substituted ''20 years'' for ''ten years'' in par. (17).

Pub. L. 101–649, § 162(e)(1), which provided that par. (5) is amended in subpar. (A), by striking ''Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor'' and inserting ''Any alien who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1153(b) of this title, in subpar. (B), by inserting ''who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1153(b) of this title'' after ''An alien'' the first place it appears, and by striking subpar. (C), was repealed by Pub. L. 102–232, § 302(e)(6). See Construction of 1990 Amendment note below.

Pub. L. 101–246, § 131(a), added par. (34) which read as follows: ''Any alien who has committed in the United States any serious criminal offense, as defined in section 1101(h) of this title, for whom immunity from criminal jurisdiction was exercised with respect to that offense, who as a consequence of the offense and the exercise of immunity has departed the United States, and who has not subsequently submitted fully to the jurisdiction of the court in the United States with jurisdiction over the offense.''

Subsec. (b). Pub. L. 101–649, § 601(b), added subsec. (b) and struck out former subsec. (b) which related to nonapplicability of subsec. (a)(25).

Subsec. (c). Pub. L. 101–649, § 601(d)(1), substituted ''subsection (a) of this section (other than subparagraphs (A), (B), (C), or (E) of paragraph (3))'' for ''paragraph (1) through (25) and paragraphs (30) and (31) of subsection (a) of this section''.

Pub. L. 101–649, § 511(a), inserted at end ''The first sentence of this subsection shall not apply to an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years.''

Subsec. (d)(1), (2). Pub. L. 101–649, § 601(d)(2)(A), struck out pars. (1) and (2) which related to applicability of subsec. (a)(11), (25), and (28).

Subsec. (d)(3). Pub. L. 101–649, § 601(d)(2)(B), substituted ''under subsection (a) of this section (other than paragraphs (3)(A), (3)(C), and (3)(D) of such subsection)'' for ''under one or more of the paragraphs enumerated in subsection (a) of this section (other than paragraphs (27), (29), and (33))'' wherever appearing, and inserted at end ''The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this paragraph.''

Subsec. (d)(4). Pub. L. 101–649, § 601(d)(2)(C), substituted ''(7)(B)(i)'' for ''(26)''.

Subsec. (d)(5)(A). Pub. L. 101–649, § 202(b), inserted ''or in section 1184(f) of this title'' after ''except as provided in subparagraph (B)''.

Subsec. (d)(6). Pub. L. 101–649, § 601(d)(2)(A), struck out par. (6) which directed that Attorney General prescribe conditions to control excludable aliens applying for temporary admission.

Subsec. (d)(7). Pub. L. 101–649, § 601(d)(2)(D), substituted ''(other than paragraph (7))'' for ''of this section, except paragraphs (20), (21), and (26),''.

Subsec. (d)(8). Pub. L. 101–649, § 601(d)(2)(E), substituted ''(3)(A), (3)(B), (3)(C), and (7)(B)'' for ''(26), (27), and (29)''.

Subsec. (d)(9), (10). Pub. L. 101–649, § 601(d)(2)(A), struck out pars. (9) and (10) which related to applicability of pars. (7) and (15), respectively, of subsec. (a).

Subsec. (d)(11). Pub. L. 101–649, § 601(d)(2)(F), added par. (11).

Subsec. (g). Pub. L. 101–649, § 601(d)(3), amended subsec. (g) generally, substituting provisions relating to waiver of application for provisions relating to admission of mentally retarded, tubercular, and mentally ill aliens.

Subsec. (h). Pub. L. 101–649, § 601(d)(4), amended subsec. (h) generally, substituting provisions relating to waiver of certain subsec. (a)(2) provisions for provisions relating to nonapplicability of subsec. (a)(9), (10), (12), (23), and (34).

Pub. L. 101–246, § 131(c), substituted ''(12), or (34)'' for ''or (12)''.

Subsec. (i). Pub. L. 101–649, § 601(d)(5), amended subsec. (i) generally, substituting provisions relating to waiver of subsec. (a)(6)(C)(i) of this section for provisions relating to admission of alien spouse, parent or child excludable for fraud.

Subsec. (k). Pub. L. 101–649, § 601(d)(6), substituted ''paragraph (5)(A) or (7)(A)(i)'' for ''paragraph (14), (20), or (21)''.

Subsec. (*l*). Pub. L. 101–649, § 601(d)(7), substituted ''paragraph (7)(B)(i)'' for ''paragraph (26)(B)''.

Subsec. (m)(2)(A). Pub. L. 101–649, § 162(f)(2)(B), in opening provision, struck out '', with respect to a facility for which an alien will perform services,'' before ''is an attestation'', in cl. (iii) inserted ''employed by the facility'' after ''The alien'', and inserted at end ''In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.''

Subsec. (n). Pub. L. 101–649, § 205(c)(3), added subsec. (n).

1989—Subsec. (m). Pub. L. 101–238 added subsec. (m).

1988—Subsec. (a)(17). Pub. L. 100–690 inserted ''(or within ten years in the case of an alien convicted of an aggravated felony)'' after ''within five years''.

Subsec. (a)(19). Pub. L. 100–525, § 7(c)(1), made technical correction to directory language of Pub. L. 99–639, § 6(a). See 1986 Amendment note below.

Subsec. (a)(32). Pub. L. 100–525, § 9(i)(1), substituted ''Secretary of Education'' for ''Commissioner of Education'' and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (d)(4). Pub. L. 100–525, § 8(f), added Pub. L. 99–653, § 7(d)(2). See 1986 Amendment note below.

Subsec. (e). Pub. L. 100–525, § 9(i)(2), substituted ''Director of the United States Information Agency'' for ''Secretary of State'' the first place appearing, and ''Director'' for ''Secretary of State'' each subsequent place appearing.

Subsec. (g). Pub. L. 100–525, § 9(i)(3), substituted ''Secretary of Health and Human Services'' for ''Surgeon General of the United States Public Health Service'' wherever appearing.

Subsec. (h). Pub. L. 100–525, § 9(i)(4), substituted ''paragraph (9)'' for ''paragraphs (9)''.

Subsec. (i). Pub. L. 100–525, § 7(c)(3), added Pub. L. 99–639, § 6(b). See 1986 Amendment note below.

Subsec. (*l*). Pub. L. 100–525, § 3(1)(A), made technical correction to Pub. L. 99–396, § 14(a). See 1986 Amendment note below.

1987—Subsec. (a)(23). Pub. L. 100–204 amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21); or any alien who the consular officer or im-

migration officer know or have reason to believe is or has been an illicit trafficker in any such controlled substance;''.

1986—Subsec. (a)(19). Pub. L. 99–639, § 6(a), as amended by Pub. L. 100–525, § 7(c)(1), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;''.

Subsec. (a)(23). Pub. L. 99–570 substituted ''any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)'' for ''any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, or isonipecaine or any addiction-forming or addiction-sustaining opiate'' and ''any such controlled substance'' for ''any of the aforementioned drugs''.

Subsec. (a)(24). Pub. L. 99–653 struck out par. (24) which related to aliens seeking admission from foreign contiguous territory or adjacent islands who arrived there on vessel or aircraft of nonsignatory line or noncomplying transportation line and have not resided there at least two years subsequent to such arrival, except for aliens described in section 1101(a)(27)(A) of this title and aliens born in Western Hemisphere, and further provided that no paragraph following par. (24) shall be redesignated as result of this amendment.

Subsec. (d)(4). Pub. L. 99–653, § 7(d)(2), as added by Pub. L. 100–525, § 8(f), substituted ''section 1228(c) of this title'' for ''section 1228(d) of this title''.

Subsec. (i). Pub. L. 99–639, § 6(b), as added by Pub. L. 100–525, § 7(c)(3), inserted ''or other benefit under this chapter'' after ''United States,''.

Subsec. (*l*). Pub. L. 99–396, § 14(a), as amended by Pub. L. 100–525, § 3(1)(A), amended subsec. (*l*) generally, designating existing provisions as par. (1) and redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, inserting in par. (1) as so designated reference to consultation with the Governor of Guam, inserting in subpar. (B) as so redesignated reference to the welfare, safety, and security of the territories and commonwealths of the United States, and adding pars. (2) and (3).

1984—Subsec. (a)(9). Pub. L. 98–473 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Any alien who would be excludable because of a conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense;''.

Subsec. (*l*). Pub. L. 98–454 added subsec. (*l*).

1981—Subsec. (a)(17). Pub. L. 97–116, § 4(1), inserted ''and who seek admission within five years of the date of such deportation or removal,'' after ''section 1252(b) of this title,''.

Subsec. (a)(32). Pub. L. 97–116, §§ 5(a)(1), 18(e)(1), substituted ''in the United States)'' for ''in the United States'' and inserted provision that for purposes of this paragraph an alien who is a graduate of a medical school be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date.

Subsec. (d)(6). Pub. L. 97–116, § 4(2), struck out provision that the Attorney General make a detailed report to Congress in any case in which he exercises his authority under par. (3) of this subsection on behalf of any alien excludable under subsec. (a)(9), (10), and (28) of this section.

Subsec. (h). Pub. L. 97–116, § 4(3), substituted ''paragraphs (9), (10), or (12) of subsection (a) of this section or paragraph (23) of such subsection as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana'' for ''paragraphs (9), (10), or (12) of subsection (a) of this section''.

Subsec. (j)(1). Pub. L. 97–116, § 5(b)(1), inserted ''as follows'' after ''training are''.

Subsec. (j)(1)(A). Pub. L. 97–116, § 5(b)(3), (4), substituted ''Secretary of Education'' for ''Commissioner of Education'' and a period for the semicolon at the end.

Subsec. (j)(1)(B). Pub. L. 97–116, § 5(a)(2), (b)(3), (7)(A), (B), substituted ''Secretary of Education'' for ''Commissioner of Education'', ''(ii)(I)'' for ''(ii)'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''; inserted ''(II)'' before ''has competency'', ''(III)'' before ''will be able to adapt'', and ''(IV)'' before ''has adequate prior education''; and inserted provision that for purposes of this subparagraph an alien who is a graduate of a medical school be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date.

Subsec. (j)(1)(C). Pub. L. 97–116, § 5(b)(2)–(4), struck out ''(including any extension of the duration thereof under subparagraph (D))'' after ''to the United States'' and substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' and a period for ''; and'' at end.

Subsec. (j)(1)(D). Pub. L. 97–116, § 5(b)(5), substituted provision permitting aliens coming to the United States to study in medical residency training programs to remain until the typical completion date of the program, as determined by the Director of the International Communication Agency at the time of the alien's entry, based on criteria established in coordination with the Secretary of Health and Human Services, except that such duration be limited to seven years unless the alien demonstrates to the satisfaction of the Director that the country to which the alien will return after such specialty education has exceptional need for an individual trained in such specialty, and that the alien may change enrollment in programs once within two years after coming to the United States if approval of the Director is obtained and further commitments are obtained from the alien to assure that, upon completion of the program, the alien would return to his country for provision limiting the duration of the alien's participation in the program for which he is coming to the United States to not more than 2 years, with a possible one year extension.

Subsec. (j)(1)(E). Pub. L. 97–116, § 5(b)(6), added subpar. (E).

Subsec. (j)(2)(A). Pub. L. 97–116, § 5(b)(7)(C)–(F), substituted ''and (B)(ii)(I)'' for ''and (B)'' and ''1983'' for ''1981''; inserted ''(i) the Secretary of Health and Human Services determines, on a case-by-case basis, that'' after ''if''; and added cl. (ii).

Subsec. (j)(2)(B). Pub. L. 97–116, § 5(b)(7)(G), inserted provision directing Secretary of Health and Human Services, in coordination with Attorney General and Director of the International Communication Agency, to monitor the issuance of waivers under subpar. (A) and the needs of the communities, with respect to which such waivers are issued, to assure that quality medical care is provided and to review each program with such a waiver to assure that the plan described in subpar. (A)(ii) is being carried out and that the partici-

pants in such program are being provided appropriate supervision in their medical education and training.

Subsec. (j)(2)(C). Pub. L. 97–116, § 5(b)(7)(G), added subpar. (C).

Subsec. (j)(3). Pub. L. 97–116, § 5(b)(8), added par. (3).

Subsec. (k). Pub. L. 97–116, § 18(e)(2), added subsec. (k).

1980—Subsec. (a)(14), (32). Pub. L. 96–212, § 203(d), substituted ''1153(a)(7)'' for ''1153(a)(8)''.

Subsec. (d)(5). Pub. L. 96–212, § 203(f), redesignated existing provisions as subpar. (A), inserted provision excepting subpar. (B), and added subpar. (B).

Subsec. (j)(2)(A). Pub. L. 96–538 substituted ''December 30, 1981'' for ''December 30, 1980''.

1979—Subsec. (d)(9), (10). Pub. L. 96–70 added pars. (9) and (10).

1978—Subsec. (a)(33). Pub. L. 95–549, § 101, added par. (33).

Subsec. (d)(3). Pub. L. 95–549, § 102, inserted reference to par. (33) in parenthetical text.

1977—Subsec. (a)(32). Pub. L. 95–83, § 307(q)(1), inserted ''not accredited by a body or bodies approved for the purpose by the Commissioner of Education (regardless of whether such school of medicine is in the United States'' after ''graduates of a medical school'' in first sentence and struck out second sentence exclusion of aliens provision with respect to application to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of the United States citizens or of aliens lawfully admitted for permanent residence).

Subsec. (j)(1)(B). Pub. L. 95–83, § 307(q)(2)(A), inserted cl. (i) and designated existing provisions as cl. (ii).

Subsec. (j)(1)(C). Pub. L. 95–83, § 307(q)(2)(B), substituted ''that there is a need in that country for persons with the skills the alien will acquire in such education or training'' for ''that upon such completion and return, he will be appointed to a position in which he will fully utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country''.

Subsec. (j)(1)(D). Pub. L. 95–83, § 307(q)(2)(C), substituted ''at the written request'' for ''at the request'', struck out cl. ''(i) such government provides a written assurance, satisfactory to the Secretary of Health, Education, and Welfare, that the alien will, at the end of such extension, be appointed to a position in which he will fully utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country,'', and redesignated as cls. (i) and (ii) former cls. (ii) and (iii).

Subsec. (j)(2)(A). Pub. L. 95–83, § 307(q)(2)(D), substituted ''(A) and (B)'' for ''(A) through (D)''.

1976—Subsec. (a)(14). Pub. L. 94–571, § 5, in revising par. (14), inserted in cl. (A) ''(or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts)'' and struck out ''in the United States'' after ''sufficient workers'' and ''destined'' before ''to perform'' and introductory provision of last sentence making exclusion of aliens under par. (14) applicable to special immigrants defined in former provision of section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence).

Subsec. (a)(24). Pub. L. 94–571, § 7(d), substituted in parenthetical text ''section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere'' for ''section 1101(a)(27)(A) and (B) of this title''.

Subsec. (a)(32). Pub. L. 94–484, § 601(a), added par. (32).

Subsec. (e). Pub. L. 94–484, § 601(c), substituted ''(i) whose'' for ''whose (i)'', and ''residence, (ii)'' for ''residence, or (ii)'', inserted ''or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training,'' before ''shall be eligible'', and inserted '', except in the case of an alien described in clause (iii),'' in second proviso.

Subsec. (j). Pub. L. 94–484, § 601(d), added subsec. (j).

1970—Subsec. (e). Pub. L. 91–225 inserted cls. (i) and (ii) and reference to eligibility for nonimmigrant visa under section 1101(a)(15)(L) of this title, provided for waiver of requirement of two-year foreign residence abroad where alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion or where the foreign country of alien's nationality or last residence has furnished a written statement that it has no objection to such waiver for such alien, and struck out alternative provision for residence and physical presence in another foreign country and former first and final provisos which read as follows: ''Provided, That such residence in another foreign country shall be considered to have satisfied the requirements of this subsection if the Secretary of State determines that it has served the purpose and the intent of the Mutual Educational and Cultural Exchange Act of 1961'' and ''And provided further, That the provisions of this subchapter shall apply also to those persons who acquired exchange visitor status under the United States Information and Educational Exchange Act of 1948, as amended.''

1965—Subsec. (a)(1). Pub. L. 89–236, § 15(a), substituted ''mentally retarded'' for ''feebleminded''.

Subsec. (a)(4). Pub. L. 89–236, § 15(b), substituted ''or sexual deviation'' for ''epilepsy''.

Subsec. (a)(14). Pub. L. 89–236, § 10(a), inserted requirement that Secretary of Labor make an affirmative finding that any alien seeking to enter the United States as a worker, skilled or otherwise, will not replace a worker in the United States nor will the employment of the alien adversely affect the wages and working conditions of individuals in the United States similarly employed, and made the requirement applicable to special immigrants (other than the parents, spouses, and minor children of U.S. citizens or permanent resident aliens), preference immigrants described in sections 1153(a)(3) and 1153(a)(6) of this title, and nonpreference immigrants.

Subsec. (a)(20). Pub. L. 89–236, § 10(b), substituted ''1181(a)'' for ''1181(e)''.

Subsec. (a)(21). Pub. L. 89–236, § 10(c), struck out ''quota'' before ''immigrant''.

Subsec. (a)(24). Pub. L. 89–236, § 10(d), substituted ''other than aliens described in section 1101(a)(27)(A) and (B)'' for ''other than those aliens who are native-born citizens of countries enumerated in section 1101(a)(27) of this title and aliens described in section 1101(a)(27)(B) of this title''.

Subsec. (g). Pub. L. 89–236, § 15(c), redesignated subsec. (f) of sec. 212 of the Immigration and Nationality Act as subsec. (g) thereof, which for purposes of codification had already been designated as subsec. (g) of this section and granted the Attorney General authority to admit any alien who is the spouse, unmarried son or daughter, minor adopted child, or parent of a citizen or lawful permanent resident and who is mentally retarded or has a past history of mental illness under the same conditions as authorized in the case of such close relatives afflicted with tuberculosis.

Subsecs. (h), (i). Pub. L. 89–236, § 15(c), redesignated subsecs. (g) and (h) of sec. 212 of the Immigration and Nationality Act as subsecs. (h) and (i) respectively thereof, which for purposes of codification had already been designated as subsecs. (h) and (i) of this section.

1961—Subsec. (a)(6). Pub. L. 87–301, § 11, struck out references to tuberculosis and leprosy.

Subsec. (a)(9). Pub. L. 87–301, § 13, authorized admission of aliens who would be excluded because of conviction of a violation classifiable as an offense under section 1(3) of title 18, by reason of punishment actually imposed, or who admit commission of an offense classifiable as a misdemeanor under section 1(2) of title 18, by reason of punishment which might have been imposed, if otherwise admissible and provided the alien has committed, or admits to commission of, only one such offense.

Subsecs. (e), (f). Pub. L. 87–256 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsecs. (g) to (i). Pub. L. 87–301, §§12, 14, 15, added subsecs. (f) to (h), which for purposes of codification have been designated as subsecs. (g) to (i).

1960—Subsec. (a). Pub. L. 86–648 inserted ''or marihuana'' after ''narcotic drugs'' in cl. (23).

1959—Subsec. (d). Pub. L. 86–3 struck out provisions from cl. (7) which related to aliens who left Hawaii and to persons who were admitted to Hawaii under section 8(a)(1) of the act of March 24, 1934, or as nationals of the United States.

1958—Subsec. (d)(7). Pub. L. 85–508 struck out provisions which related to aliens who left Alaska.

1956—Subsec. (a)(23). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–161, div. J, title VI, §691(f), Dec. 26, 2007, 121 Stat. 2366, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this section [Dec. 26, 2007], and these amendments and sections 212(a)(3)(B) and 212(d)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B) and 1182(d)(3)(B)), as amended by these sections, shall apply to—

''(1) removal proceedings instituted before, on, or after the date of enactment of this section; and

''(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, §103(d), May 11, 2005, 119 Stat. 308, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005], and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to—

''(1) removal proceedings instituted before, on, or after the date of the enactment of this division; and

''(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–458, title V, §5501(c), Dec. 17, 2004, 118 Stat. 3740, provided that: ''The amendments made by this section [amending this section and section 1227 of this title] shall apply to offenses committed before, on, or after the date of enactment of this Act [Dec. 17, 2004].''

Pub. L. 108–447, div. J, title IV, §424(a)(2), Dec. 8, 2004, 118 Stat. 3355, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if enacted on October 1, 2003.''

Pub. L. 108–447, div. J, title IV, §430, Dec. 8, 2004, 118 Stat. 3361, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle B (§§421–430) of title IV of div. J of Pub. L. 108–447, enacting section 1381 of this title, amending this section, sections 1184, and 1356 of this title, section 2916a of Title 29, Labor, and section 1869c of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 1101 and 1184 of this title] and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act [Dec. 8, 2004].

''(b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 [amending sections 1184 and 1356 of this title] shall take effect upon the date of enactment of this Act [Dec. 8, 2004].''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out in a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–273, div. C, title I, §11018(d), Nov. 2, 2002, 116 Stat. 1825, provided that: ''The amendments made by this section [amending this section, section 1184 of this title, and provisions set out as a note under this section] shall take effect as if this Act [see Tables for classification] were enacted on May 31, 2002.''

Pub. L. 107–150, §2(b), Mar. 13, 2002, 116 Stat. 75, provided that: ''The amendments made by subsection (a) [amending this section and section 1183a of this title] shall apply with respect to deaths occurring before, on, or after the date of the enactment of this Act [Mar. 13, 2002], except that, in the case of a death occurring before such date, such amendments shall apply only if—

''(1) the sponsored alien—

''(A) requests the Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) before such death; and

''(B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) by reason of such amendments; and

''(2) the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(ii) of such Act [8 U.S.C. 1183a(f)(5)(B)(ii)] (as amended by subsection (a)(1) of this Act).''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–56, title IV, §411(c), Oct. 26, 2001, 115 Stat. 348, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1158, 1189, and 1227 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 2001] and shall apply to—

''(A) actions taken by an alien before, on, or after such date; and

''(B) all aliens, without regard to the date of entry or attempted entry into the United States—

''(i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or

''(ii) seeking admission to the United States on or after such date.

''(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, sections 212(a)(3)(B) and 237(a)(4)(B) of the Immigration and Nationality Act, as amended by this Act [8 U.S.C. 1182(a)(3)(B), 1227(a)(4)(B)], shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act [Oct. 26, 2001] (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

''(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(vi)(II).—

''(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a) [amending this section], on the ground that the alien engaged in a terrorist activity described in subclause

(IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a group at any time when the group was not a terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189) or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended).

''(B) STATUTORY CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

''(i) described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended); or

''(ii) described in subclause (IV)(cc), (V)(cc), or (VI)(dd) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization described in section 212(a)(3)(B)(vi)(III) of such Act (as so amended).

''(4) EXCEPTION.—The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of the enactment of this Act [Oct. 26, 2001] upon the recommendation of a consular officer who has concluded that there is not reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.''

[Another section 411(c) of Pub. L. 107–56 amended section 1189 of this title.]

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–395, title II, § 201(b)(3), Oct. 30, 2000, 114 Stat. 1634, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–638) and shall apply to voting occurring before, on, or after September 30, 1996. The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–637) and shall apply to representations made on or after September 30, 1996. Such amendments shall apply to individuals in proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] on or after September 30, 1996.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–95, § 2(e), Nov. 12, 1999, 113 Stat. 1317, as amended by Pub. L. 109–423, § 2(2), Dec. 20, 2006, 120 Stat. 2900, provided that: ''The amendments made by this section [amending this section and section 1101 of this title] shall apply to classification petitions filed for nonimmigrant status only during the period—

''(1) beginning on the date that interim or final regulations are first promulgated under subsection (d) [set out as a note below]; and

''(2) ending on the date that is 3 years after the date of the enactment of the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 [Dec. 20, 2006].''

[Pub. L. 109–423, § 3, Dec. 20, 2006, 120 Stat. 2900, provided that: ''The requirements of chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act') or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement the amendments made by section 2 [amending provisions set out as a note above] to the extent the Secretary Homeland of Security [sic], the Secretary of Labor, or the Secretary of Health and Human Services determines that compliance with any such requirement would impede the expeditious implementation of such amendments.'']

Pub. L. 106–95, § 4(b), Nov. 12, 1999, 113 Stat. 1318, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 12, 1999], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENTS

Pub. L. 105–292, title VI, § 604(b), Oct. 27, 1998, 112 Stat. 2814, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to aliens seeking to enter the United States on or after the date of the enactment of this Act [Oct. 27, 1998].''

Pub. L. 105–277, div. C, title IV, § 412(d), Oct. 21, 1998, 112 Stat. 2681–645, provided that: ''The amendments made by subsection (a) [amending this section] apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act [subsec. (n)(1) of this section] on or after the date final regulations are issued to carry out such amendments, and the amendments made by subsections (b) and (c) [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1998].'' [Interim final regulations implementing these amendments were promulgated on Dec. 19, 2000, published Dec. 20, 2000, 65 F.R. 80110, and effective, except as otherwise provided, Jan. 19, 2001.]

Pub. L. 105–277, div. C, title IV, § 413(e)(2), Oct. 21, 1998, 112 Stat. 2681–651, as amended by Pub. L. 106–313, title I, § 107(b), Oct. 17, 2000, 114 Stat. 1255, provided that: ''The amendment made by paragraph (1) [amending this section] shall cease to be effective on September 30, 2003.''

Pub. L. 105–277, div. C, title IV, § 415(b), Oct. 21, 1998, 112 Stat. 2681–655, provided that: ''The amendment made by subsection (a) [amending this section] applies to prevailing wage computations made—

''(1) for applications filed on or after the date of the enactment of this Act [Oct. 21, 1998]; and

''(2) for applications filed before such date, but only to the extent that the computation is subject to an administrative or judicial determination that is not final as of such date.''

Pub. L. 105–277, div. C, title IV, § 431(b), Oct. 21, 1998, 112 Stat. 2681–658, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to activities occurring on or after the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–277, div. G, subdiv. B, title XXII, § 2226(b), Oct. 21, 1998, 112 Stat. 2681–821, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to aliens seeking admission to the United States on or after the date of enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 301(b)(3) of title III of div. C of Pub. L. 104–208 provided that: ''In applying section 212(a)(9)(B) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(9)(B)], as inserted by paragraph (1), no period before the title III–A effective date [see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title] shall be included in a period of unlawful presence in the United States.''

Section 301(c)(2) of title III of div. C of Pub. L. 104–208 provided that: ''The requirements of subclauses (II) and (III) of section 212(a)(6)(A)(ii) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(6)(A)(ii)(II), (III)], as inserted by paragraph (1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before the title III–A effective date (described in section 309(a) of this division [set out as a note under section 1101 of this title]).''

Section 306(d) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 104–132.

Amendment by sections 301(b)(1), (c)(1), 304(b), 305(c), 306(d), and 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (f)(1)(C)–(F), (3)(A), (g)(1), (4)(B), (10)(A), (H) of div. C of Pub. L. 104–208 effective on the first day of the first month beginning more than 180 days after Sept. 30, 1996, with certain transitional provisions, including authority for Attorney General to waive application of subsec. (a)(9) of this section in case of an alien provided benefits under section 301 of Pub. L. 101–649, set out as a note under section 1255a of this title, and including provision that no period of time before Sept. 30, 1996, be included in the period of 1 year described in subsec. (a)(6)(B)(i) of this section, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 322(a) of Pub. L. 104–208 applicable to convictions and sentences entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 341(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section] shall apply with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996.''

Section 342(b) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 30, 1996] and shall apply to incitement regardless of when it occurs.''

Section 344(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1251 [now 1227] of this title] shall apply to representations made on or after the date of the enactment of this Act [Sept. 30, 1996].''

Section 346(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(F)] after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period.''

Section 347(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1251 of this title] shall apply to voting occurring before, on, or after the date of the enactment of this Act [Sept. 30, 1996].''

Section 348(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Sept. 30, 1996] and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date.''

Section 351(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1251 of this title] shall apply to applications for waivers filed before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but shall not apply to such an application for which a final determination has been made as of the date of the enactment of this Act.''

Section 352(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals who renounce United States citizenship on and after the date of the enactment of this Act [Sept. 30, 1996].''

Section 358 of title III of div. C of Pub. L. 104–208 provided that: ''The amendments made by this subtitle [subtitle D (§§354–358) of title III of div. C of Pub. L. 104–208, amending this section and sections 1189, 1531, 1532, 1534, and 1535 of this title] shall be effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132).''

Section 531(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to applications submitted on or after such date, not earlier than 30 days and not later than 60 days after the date the Attorney General promulgates under section 551(c)(2) of this division [set out as a note under section 1183a of this title] a standard form for an affidavit of support, as the Attorney General shall specify, but subparagraphs (C) and (D) of section 212(a)(4) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4)(C), (D)], as so amended, shall not apply to applications with respect to which an official interview with an immigration officer was conducted before such effective date.''

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENTS

Section 203(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this Act [Oct. 25, 1994].''

Amendment by section 219(e) 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 an Effective Date of 1994 Amendment note under section 1101 of this title.

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(1), (5) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

Pub. L. 103–416, title II, §220(c), Oct. 25, 1994, 108 Stat. 4320, as amended by Pub. L. 104–208, div. C, title VI, §622(a), Sept. 30, 1996, 110 Stat. 3009–695; Pub. L. 107–273, div. C, title I, §11018(b), Nov. 2, 2002, 116 Stat. 1825; Pub. L. 108–441, §1(a)(1), Dec. 3, 2004, 118 Stat. 2630; Pub. L. 109–477, §2, Jan. 12, 2007, 120 Stat. 3572, provided that: ''The amendments made by this section [amending this section and section 1184 of this title] shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(J)], or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act [Oct. 25, 1994] and before June 1, 2008.''

[Pub. L. 109–477, §3, Jan. 12, 2007, 120 Stat. 3572, provided that: ''The amendment made by section 2 [amending section 220(c) of Pub. L. 103–416, set out above] shall take effect as if enacted on May 31, 2006.'']

[Pub. L. 108–441, §1(a)(2), Dec. 3, 2004, 118 Stat. 2630, provided that: ''The amendment made by paragraph (1) [amending section 220(c) of Pub. L. 103–416, set out above] shall take effect as if enacted on May 31, 2004.'']

Section 506(c) of Pub. L. 103–317, as amended by Pub. L. 105–46, §123, Sept. 30, 1997, 111 Stat. 1158; Pub. L. 105–119, title I, §111(b), Nov. 26, 1997, 111 Stat. 2458, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1994, and shall cease to have effect on October 1, 1997. The amendment made by subsection (b) [amending section 1255 of this title] shall take effect on October 1, 1994.''

Pub. L. 105–46, §123, Sept. 30, 1997, 111 Stat. 1158, which directed the amendment of section 506(c) of Pub. L. 103–317, set out above, by striking ''September 30, 1997'' and inserting ''October 23, 1997'' was probably intended by Congress to extend the termination date ''October 1, 1997'' to ''October 23, 1997''. For further temporary extensions of the October 23, 1997 termination date, see list of continuing appropriations acts contained in a Continuing Appropriations for Fiscal Year 1998 note set out under section 635f of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2007(b) of Pub. L. 103–43 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 30 days after the date of the enactment of this Act [June 10, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 302(e)(6), 303(a)(5)(B), (6), (7)(B), 306(a)(10), (12), 307(a)–(g) of Pub. L. 102–232 effec-

tive 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.

Section 302(e)(9) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 162(e)(1) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, with general transition provisions and admissibility standards, see section 161(a), (c), (d) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 162(f)(2)(B) of Pub. L. 101–649 applicable as though included in the enactment of Pub. L. 101–238, see section 162(f)(3) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Section 202(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1184 of this title] shall take effect 60 days after the date of the enactment of this Act [Nov. 29, 1990].''

Amendment by section 205(c)(3) of Pub. L. 101–649 effective Oct. 1, 1991, see section 231 of Pub. L. 101–649, set out as a note under section 1101 of this title.

Section 511(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring after the date of the enactment of this Act [Nov. 29, 1990].''

Section 514(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring on or after January 1, 1991.''

Amendment by section 601(a), (b), and (d) 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 1989 AMENDMENT

Section 3(d) of Pub. L. 101–238 provided that: ''The amendments made by the previous provisions of this section [amending this section and section 1101 of this title] shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of this Act [Dec. 18, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 7349(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any alien convicted of an aggravated felony who seeks admission to the United States on or after the date of the enactment of this Act [Nov. 18, 1988].''

Section 3 of Pub. L. 100–525 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–396.

Section 7(d) of Pub. L. 100–525 provided that: ''The amendments made by this section [amending this section, sections 1186a and 1255 of this title, and provisions set out as a note below] shall be effective as if they were included in the enactment of the Immigration Marriage Fraud Amendments of 1986 [Pub. L. 99–639].''

Amendment by section 8(f) 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 6(c), formerly 6(b), of Pub. L. 99–639, as redesignated and amended by Pub. L. 100–525, §7(c)(2), Oct. 24, 1988, 102 Stat. 2616, provided that: ''The amendment made by this section [amending this section] shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act [Nov. 10, 1986] based on fraud or misrepresentations occurring before, on, or after such date.''

Section 1751(c) of Pub. L. 99–570 provided that: ''The amendments made by the [sic] subsections (a) and (b) of this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this section [Oct. 27, 1986], and the amendments made by subsection (a) [amending this section] shall apply to aliens entering the United States after the date of the enactment of this section.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 5(c) of Pub. L. 97–116 provided that: ''The amendments made by paragraphs (2), (5), and (6) of subsection (b) [striking out ''including any extension of the duration thereof under subparagraph (D)'' in subsec. (j)(1)(C) of this section, amending subsec. (j)(1)(D) of this section, and enacting subsec. (j)(1)(E) of this section] shall apply to aliens entering the United States as exchange visitors (or otherwise acquiring exchange visitor status) on or after January 10, 1978.''

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, except as provided by section 5(c) of Pub. L. 97–116, 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 section 203(d) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(f) of Pub. L. 96–212 applicable, except as otherwise provided, to aliens paroled into the United States on or after the sixtieth day after Mar. 17, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Sept. 27, 1979, see section 3201(d)(1) of Pub. L. 96–70, set out as a note under section 1101 of this title.

Section 3201(d)(2) of Pub. L. 96–70 provided that: ''Paragraph (9) of section 212(d) of the Immigration and Nationality Act [subsec. (d)(9) of this section], as added by subsection (b) of this section, shall cease to be effective at the end of the transition period [midnight Mar. 31, 1982, see section 2101 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to section 3831 of Title 22, Foreign Relations and Intercourse].''

EFFECTIVE DATE OF 1976 AMENDMENTS

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.

Amendment by section 601(d) of Pub. L. 94–484 applicable only on and after Jan. 10, 1978, notwithstanding section 601(f) of Pub. L. 94–484, see section 602(d) of Pub. L. 94–484, as added by section 307(q)(3) of Pub. L. 95–83, set out as an Effective Date of 1977 Amendment note under section 1101 of this title.

Section 601(f) of Pub. L. 94–484 provided that: ''The amendments made by this section [amending this section and section 1101 of this title] shall take effect ninety days after the date of enactment of this section [Oct. 12, 1976].''

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.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956.

CONSTRUCTION OF 1990 AMENDMENT

Section 302(e)(6) of Pub. L. 102–232 provided that: ''Paragraph (1) of section 162(e) of the Immigration Act of 1990 [Pub. L. 101–649, amending this section] is repealed, and the provisions of law amended by such paragraph are restored as though such paragraph had not been enacted.''

REGULATIONS

Pub. L. 106–95, § 2(d), Nov. 12, 1999, 113 Stat. 1316, provided that: ''Not later than 90 days after the date of the enactment of this Act [Nov. 12, 1999], the Secretary of Labor (in consultation, to the extent required, with the Secretary of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as amended by subsection (b)).'' [Interim final regulations implementing subsec. (m) of this section were promulgated Aug. 21, 2000, published Aug. 22, 2000, 65 F.R. 51138, and effective Sept. 21, 2000.]

Pub. L. 105–277, div. C, title IV, § 412(e), Oct. 21, 1998, 112 Stat. 2681–645, provided that: ''In first promulgating regulations to implement the amendments made by this section [amending this section] in a timely manner, the Secretary of Labor and the Attorney General may reduce to not less than 30 days the period of public comment on proposed regulations.''

Section 124(b)(2) of div. C of Pub. L. 104–208 provided that: ''The Attorney General shall first issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act [8 U.S.C. 1182(f)], as added by the amendment made by paragraph (1), not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996].''

TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22, Foreign Relations and Intercourse.

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 DURESS WAIVERS

Pub. L. 110–161, div. J, title VI, § 691(e), Dec. 26, 2007, 121 Stat. 2365, provided that: ''The Secretary of Homeland Security shall provide to the Committees on the Judiciary of the United States Senate and House of Representatives a report, not less than 180 days after the enactment of this Act [Dec. 26, 2007] and every year thereafter, which may include a classified annex, if appropriate, describing—

''(1) the number of individuals subject to removal from the United States for having provided material support to a terrorist group who allege that such support was provided under duress;

''(2) a breakdown of the types of terrorist organizations to which the individuals described in paragraph (1) have provided material support;

''(3) a description of the factors that the Department of Homeland Security considers when evaluating duress waivers; and

''(4) any other information that the Secretary believes that the Congress should consider while overseeing the Department's application of duress waivers.''

INADMISSIBILITY OF FOREIGN OFFICIALS AND FAMILY MEMBERS INVOLVED IN KLEPTOCRACY

Pub. L. 110–161, div. J, title VI, § 699L, Dec. 26, 2007, 121 Stat. 2373, provided that:

''(a) In furtherance of the National Strategy to Internationalize Efforts Against Kleptocracy and Presidential Proclamation 7750 [set out below], the Secretary of State shall compile and maintain a list of officials of foreign governments and their immediate family members who the Secretary determines there is credible evidence to believe have been involved in corruption relating to the extraction of natural resources in their countries.

''(b) Any individual on the list submitted under subsection (a) shall be ineligible for admission to the United States.

''(c) The Secretary may waive the application of subsection (a) if the Secretary determines that admission to the United States is necessary to attend the United Nations or to further United States law enforcement objectives, or that the circumstances which caused the individual to be included on the list have changed sufficiently to justify the removal of the individual from the list.

''(d) Not later than 90 days after enactment of this Act [Dec. 26, 2007] and 180 days thereafter, the Secretary of State shall submit a report, in classified form if necessary, to the Committees on Appropriations describing the evidence considered in determining involvement pursuant to subsection (a).''

MONEY LAUNDERING WATCHLIST

Pub. L. 107–56, title X, § 1006(b), Oct. 26, 2001, 115 Stat. 394, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 26, 2001], the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

RECOMMENDATIONS FOR ALTERNATIVE REMEDY FOR NURSING SHORTAGE

Pub. L. 106–95, § 3, Nov. 12, 1999, 113 Stat. 1317, provided that: ''Not later than the last day of the 4-year period described in section 2(e) [set out as a note above], the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit to the Congress recommendations (including legislative specifications) with respect to the following:

''(1) A program to eliminate the dependence of facilities described in section 212(m)(6) of the Immigration and Nationality Act [8 U.S.C. 1182(m)(6)] (as amended by section 2(b)) on nonimmigrant registered nurses by providing for a permanent solution to the shortage of registered nurses who are United States

citizens or aliens lawfully admitted for permanent residence.

''(2) A method of enforcing the requirements imposed on facilities under sections 101(a)(15)(H)(i)(c) and 212(m) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m)] (as amended by section 2) that would be more effective than the process described in section 212(m)(2)(E) of such Act [8 U.S.C. 1182(m)(2)(E)] (as so amended).''

ISSUANCE OF CERTIFIED STATEMENTS

Pub. L. 106–95, § 4(c), Nov. 12, 1999, 113 Stat. 1318, provided that: ''The Commission on Graduates of Foreign Nursing Schools, or any approved equivalent independent credentialing organization, shall issue certified statements pursuant to the amendment under subsection (a) [amending this section] not more than 35 days after the receipt of a complete application for such a statement.''

EXTENSION OF AUTHORIZED PERIOD OF STAY FOR CERTAIN NURSES

Pub. L. 104–302, § 1, Oct. 11, 1996, 110 Stat. 3656, provided that:

''(a) ALIENS WHO PREVIOUSLY ENTERED THE UNITED STATES PURSUANT TO AN H–1A VISA.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the authorized period of stay in the United States of any nonimmigrant described in paragraph (2) is hereby extended through September 30, 1997.

''(2) NONIMMIGRANT DESCRIBED.—A nonimmigrant described in this paragraph is a nonimmigrant—

''(A) who entered the United States as a nonimmigrant described in section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(a)];

''(B) who was within the United States on or after September 1, 1995, and who is within the United States on the date of the enactment of this Act [Oct. 11, 1996]; and

''(C) whose period of authorized stay has expired or would expire before September 30, 1997 but for the provisions of this section.

''(3) LIMITATIONS.—Nothing in this section may be construed to extend the validity of any visa issued to a nonimmigrant described in section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act or to authorize the re-entry of any person outside the United States on the date of the enactment of this Act.

''(b) CHANGE OF EMPLOYMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section shall not be eligible to change employers in accordance with section 214.2(h)(2)(i)(D) of title 8, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

''(c) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall issue regulations to carry out the provisions of this section.

''(d) INTERIM TREATMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section, and the spouse and child of such nonimmigrant, shall be considered as having continued to maintain lawful status as a nonimmigrant through September 30, 1997.''

REFERENCES TO INADMISSIBLE DEEMED TO INCLUDE EXCLUDABLE AND REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in subsec. (a)(1)(A) of this section to ''inadmissible'' is deemed to include a reference to ''excludable'', and any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

ANNUAL REPORT ON ALIENS PAROLED INTO UNITED STATES

Section 602(b) of div. C of Pub. L. 104–208 provided that: ''Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate describing the number and categories of aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1182(d)(5)]. Each such report shall provide the total number of aliens paroled into and residing in the United States and shall contain information and data for each country of origin concerning the number and categories of aliens paroled, the duration of parole, the current status of aliens paroled, and the number and categories of aliens returned to the custody from which they were paroled during the preceding fiscal year.''

ASSISTANCE TO DRUG TRAFFICKERS

Pub. L. 103–447, title I, § 107, Nov. 2, 1994, 108 Stat. 4695, provided that: ''The President shall take all reasonable steps provided by law to ensure that the immediate relatives of any individual described in section 487(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291f(a)), and the business partners of any such individual or of any entity described in such section, are not permitted entry into the United States, consistent with the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).''

PROCESSING OF VISAS FOR ADMISSION TO UNITED STATES

Pub. L. 103–236, title I, § 140(c), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103–415, § 1(d), Oct. 25, 1994, 108 Stat. 4299, provided that:

''(1)(A) Beginning 24 months after the date of the enactment of this Act [Apr. 30, 1994], whenever a United States consular officer issues a visa for admission to the United States, that official shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been made and that there is no basis under such system for the exclusion of such alien.

''(B) If, at the time an alien applies for an immigrant or nonimmigrant visa, the alien's name is included in the Department of State's visa lookout system and the consular officer to whom the application is made fails to follow the procedures in processing the application required by the inclusion of the alien's name in such system, the consular officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

''(2) If an alien to whom a visa was issued as a result of a failure described in paragraph (1)(B) is admitted to the United States and there is thereafter probable cause to believe that the alien was a participant in a terrorist act causing serious injury, loss of life, or significant destruction of property in the United States, the Secretary of State shall convene an Accountability Review Board under the authority of title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 [22 U.S.C. 4831 et seq.].''

ACCESS TO INTERSTATE IDENTIFICATION INDEX OF NATIONAL CRIME INFORMATION CENTER; FINGERPRINT CHECKS

Pub. L. 103–236, title I, § 140(d)–(g), Apr. 30, 1994, 108 Stat. 400, as amended by Pub. L. 103–317, title V, § 505, Aug. 26, 1994, 108 Stat. 1765; Pub. L. 104–208, div. C, title VI, § 671(g)(2), Sept. 30, 1996, 110 Stat. 3009–724; Pub. L. 105–119, title I, § 126, Nov. 26, 1997, 111 Stat. 2471, provided that:

''(d) ACCESS TO THE INTERSTATE IDENTIFICATION INDEX.—

''(1) Subject to paragraphs (2) and (3), the Department of State Consolidated Immigrant Visa Process-

ing Center shall have on-line access, without payment of any fee or charge, to the Interstate Identification Index of the National Crime Information Center solely for the purpose of determining whether a visa applicant has a criminal history record indexed in such Index. Such access does not entitle the Department of State to obtain the full content of automated records through the Interstate Identification Index. To obtain the full content of a criminal history record, the Department shall submit a separate request to the Identification Records Section of the Federal Bureau of Investigation, and shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (Public Law 101–162) [103 Stat. 988, 998].

''(2) The Department of State shall be responsible for all one-time start-up and recurring incremental non-personnel costs of establishing and maintaining the access authorized in paragraph (1).

''(3) The individual primarily responsible for the day-to-day implementation of paragraph (1) shall be an employee of the Federal Bureau of Investigation selected by the Department of State, and detailed to the Department on a fully reimbursable basis.

''(e) FINGERPRINT CHECKS.—

''(1) Effective not later than March 31, 1995, the Secretary of State shall in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available require the fingerprinting of applicants over sixteen years of age for immigrant visas. The Department of State shall submit records of such fingerprints to the Federal Bureau of Investigation in order to ascertain whether such applicants previously have been convicted of a felony under State or Federal law in the United States, and shall pay all appropriate fees.

''(2) The Secretary shall prescribe and publish such regulations as may be necessary to implement the requirements of this subsection, and to avoid undue processing costs and delays for eligible immigrants and the United States Government.

''(f) Not later than December 31, 1996, the Secretary of State and the Director of the Federal Bureau of Investigation shall jointly submit to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate, a report on the effectiveness of the procedures authorized in subsections (d) and (e).

''(g) Subsections (d) and (e) shall cease to have effect after May 1, 1998.''

VISA LOOKOUT SYSTEMS

Pub. L. 103–236, title I, § 140(b), Apr. 30, 1994, 108 Stat. 399, provided that: ''Not later than 18 months after the date of the enactment of this Act [Apr. 30, 1994], the Secretary of State shall implement an upgrade of all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities.''

Pub. L. 102–138, title I, § 128, Oct. 28, 1991, 105 Stat. 660, as amended by Pub. L. 104–208, div. C, title III, § 308(d)(3)(C), Sept. 30, 1996, 110 Stat. 3009–617, provided that:

''(a) VISAS.—The Secretary of State may not include in the Automated Visa Lookout System, or in any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the name of any alien who is not inadmissible from the United States under the Immigration and Nationality Act, subject to the provisions of this section.

''(b) CORRECTION OF LISTS.—Not later than 3 years after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall—

''(1) correct the Automated Visa Lookout System, or any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act, by deleting the name of any alien not inadmissible under the Immigration and Nationality Act; and

''(2) report to the Congress concerning the completion of such correction process.

''(c) REPORT ON CORRECTION PROCESS.—

''(1) Not later than 90 days after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State, in coordination with the heads of other appropriate Government agencies, shall prepare and submit to the appropriate congressional committees, a plan which sets forth the manner in which the Department of State will correct the Automated Visa Lookout System, and any other system or list as set forth in subsection (b).

''(2) Not later than 1 year after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall report to the appropriate congressional committees on the progress made toward completing the correction of lists as set forth in subsection (b).

''(d) APPLICATION.—This section refers to the Immigration and Nationality Act as in effect on and after June 1, 1991.

''(e) LIMITATION.—

''(1) The Secretary may add or retain in such system or list the names of aliens who are not inadmissible only if they are included for otherwise authorized law enforcement purposes or other lawful purposes of the Department of State. A name included for other lawful purposes under this paragraph shall include a notation which clearly and distinctly indicates that such person is not presently inadmissible. The Secretary of State shall adopt procedures to ensure that visas are not denied to such individuals for any reason not set forth in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(2) The Secretary shall publish in the Federal Register regulations and standards concerning maintenance and use by the Department of State of systems and lists for purposes described in paragraph (1).

''(3) Nothing in this section may be construed as creating new authority or expanding any existing authority for any activity not otherwise authorized by law.

''(f) DEFINITION.—As used in this section the term 'appropriate congressional committees' means the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate.''

CHANGES IN LABOR CERTIFICATION PROCESS

Section 122 of Pub. L. 101–649, as amended by Pub. L. 103–416, title II, § 219(ff), Oct. 25, 1995, 108 Stat. 4319, provided that:

''[(a) Repealed. Pub. L. 103–416, title II, § 219(ff), Oct. 25, 1994, 108 Stat. 4319.]

''(b) NOTICE IN LABOR CERTIFICATIONS.—The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(5)(A)], that—

''(1) no certification may be made unless the applicant for certification has, at the time of filing the application, provided notice of the filing (A) to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations; and

''(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers).''

REVIEW OF EXCLUSION LISTS

Section 601(c) of Pub. L. 101–649, as amended by Pub. L. 104–208, div. C, title III, § 308(d)(3)(B), (f)(1)(Q), Sept.

30, 1996, 110 Stat. 3009–617, 3009–621, provided that: ''The Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms for the screening of aliens applying for visas for admission, or for admission, to the United States. Such protocols and guidelines shall be developed in a manner that ensures that in the case of an alien—

''(1) whose name is in such system, and

''(2) who either (A) applies for admission after the effective date of the amendments made by this section [see Effective Date of 1990 Amendment note above], or (B) requests (in writing to a local consular office after such date) a review, without seeking admission, of the alien's continued inadmissibility under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

if the alien is no longer inadmissible because of an amendment made by this section the alien's name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be inadmissible the alien shall be informed of such determination.''

IMPLEMENTATION OF REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES DURING 5-YEAR PERIOD

Section 3(c) of Pub. L. 101–238 provided that: ''The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall—

''(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act [Dec. 18, 1989]; and

''(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—

''(A) concerning the impact of this section on the nursing shortage,

''(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,

''(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

''(D) on the advisability of extending the amendments made by this section [amending sections 1101 and 1182 of this title] beyond the 5-year period described in subsection (d) [set out above].''

PROHIBITION ON EXCLUSION OR DEPORTATION OF ALIENS ON CERTAIN GROUNDS

Section 901 of Pub. L. 100–204, as amended by Pub. L. 100–461, title V, § 555, Oct. 1, 1988, 102 Stat. 2268–36; Pub. L. 101–246, title I, § 128, Feb. 16, 1990, 104 Stat. 30, provided that no nonimmigrant alien was to be denied a visa or excluded from admission into the United States, or subject to deportation because of any past, current or expected beliefs, statements or associations which, if engaged in by a United States citizen in the United States, would be protected under the Constitution of the United States, and which provided construction regarding excludable aliens and standing to sue, prior to repeal by Pub. L. 101–649, title VI, § 603(a)(21), Nov. 29, 1990, 104 Stat. 5084.

REGULATIONS GOVERNING ADMISSION, DETENTION, AND TRAVEL OF NONIMMIGRANT ALIENS IN GUAM PURSUANT TO VISA WAIVERS

Section 14(b) of Pub. L. 99–396, as amended by Pub. L. 100–525, § 3(1)(B), Oct. 24, 1988, 102 Stat. 2614, directed Attorney General to issue, within 90 days after Aug. 27, 1986, regulations governing the admission, detention, and travel of nonimmigrant aliens pursuant to the visa waiver authorized by the amendment made by section 14(a) of Pub. L. 99–396, prior to repeal by Pub. L. 101–649, title VI, § 603(a)(19), Nov. 29, 1990, 104 Stat. 5084.

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF PROVISIONS AUTHORIZING WAIVER OF CERTAIN REQUIREMENTS FOR NONIMMIGRANT VISITORS TO GUAM

Section 14(c) of Pub. L. 99–396, as amended by Pub. L. 100–525, § 3(1)(B), (C), Oct. 24, 1988, 102 Stat. 2614, directed Attorney General to submit a report each year on implementation of 8 U.S.C. 1182(*l*) to Committees on the Judiciary and Interior and Insular Affairs of House of Representatives and Committees on the Judiciary and Energy and Natural Resources of Senate, prior to repeal by Pub. L. 101–649, title VI, § 603(a)(19), Nov. 29, 1990, 104 Stat. 5084.

SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS

Pub. L. 99–93, title I, § 132, Aug. 16, 1985, 99 Stat. 420, provided that:

''(a) REPORTING SYSTEMS.—In order to ensure that foreign narcotics traffickers are denied visas to enter the United States, as required by section 212(a)(23) of the Immigration and Naturalization Act ([former] 22 [8] U.S.C. 1182(a)(23))—

''(1) the Department of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the United States Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States, so that that information may be communicated to the appropriate United States embassies; and

''(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines which would permit the sharing of information on foreign drug traffickers.

''(b) REPORT.—Not later than six months after the date of the enactment of this Act [Aug. 16, 1985], the Chairman of the National Drug Enforcement Policy Board shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the steps taken to implement this section.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

REFUGEES FROM DEMOCRATIC KAMPUCHEA (CAMBODIA); TEMPORARY PAROLE INTO UNITED STATES FOR FISCAL YEARS 1979 AND 1980

Pub. L. 95–431, title VI, § 605, Oct. 10, 1978, 92 Stat. 1045, provided that it was the sense of Congress that United States give special consideration to plight of refugees from Democratic Kampuchea (Cambodia) and that Attorney General should parole into United States, under section 1182(d)(5) of this title for fiscal year 1979, 7,500 aliens who are nationals or citizens of Democratic Kampuchea and for fiscal year 1980, 7,500 such aliens.

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

Pub. L. 95–412, § 5, Oct. 5, 1978, 92 Stat. 909, as amended by Pub. L. 96–212, title II, § 203(g), Mar. 17, 1980, 94 Stat. 108, provided that any refugee, not otherwise eligible for retroactive adjustment of status, who was paroled into United States by Attorney General pursuant to section 1182(d)(5) of this title before Apr. 1, 1980, was to

have his status adjusted pursuant to section 1153(g) and (h) of this title.

REPORT BY ATTORNEY GENERAL TO CONGRESSIONAL COMMITTEES ON ADMISSION OF CERTAIN EXCLUDABLE ALIENS

Pub. L. 95–370, title IV, § 401, Sept. 17, 1978, 92 Stat. 627, directed Attorney General, by October 30, 1979, to report to specific congressional committees on certain cases of the admission to the United States of aliens that may have been excludable under former section 1182(a)(27) to (29) of this title.

NATIONAL BOARD OF MEDICAL EXAMINERS EXAMINATION

Section 602(a), (b) of Pub. L. 94–484, as added by Pub. L. 95–83, title III, § 307(q)(3), Aug. 1, 1977, 91 Stat. 395, eff. Jan. 10, 1977, provided that an alien who is a graduate of a medical school would be considered to have passed parts I and II of the National Board of Medical Examiners Examination if the alien was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State, held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and was on that date practicing medicine in a State, prior to repeal by Pub. L. 97–116, § 5(a)(3), Dec. 29, 1981, 95 Stat. 1612.

LABOR CERTIFICATION FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS; DEVELOPMENT OF DATA BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE NOT LATER THAN OCT. 12, 1977

Section 906 of Pub. L. 94–484 directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 12, 1976, to develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools, such data to include the number of physicians (by specialty and by percent of population) in a geographic area necessary to provide adequate medical care, including such care in hospitals, nursing homes, and other health care institutions, in such area.

RESETTLEMENT OF REFUGEE-ESCAPEE; REPORTS; FORMULA; TERMINATION DATE; PERSONS DIFFICULT TO RESETTLE; CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE

Pub. L. 86–648, §§ 1–4, 11, July 14, 1960, 74 Stat. 504, 505, as amended by Pub. L. 87–510, § 6, June 28, 1962, 76 Stat. 124; Pub. L. 89–236, § 16, Oct. 3, 1965, 79 Stat. 919, provided:

''[SECTION 1. Repealed. Pub. L. 89–236, § 16, Oct. 3, 1965, 79 Stat. 919.]

''[SEC. 2. Repealed. Pub. L. 89–236, § 16, Oct. 3, 1965, 79 Stat. 919.]

''SEC. 3. Any alien who was paroled into the United States as a refugee-escapee, pursuant to section 1 of the Act, whose parole has not theretofore been terminated by the Attorney General pursuant to such regulations as he may prescribe under the authority of section 212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section]; and who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States, and his case dealt with in accordance with the provisions of sections 235, 236, and 237 of the Immigration and Nationality Act [sections 1225, 1226, and [former] 1227 of this title].

''SEC. 4. Any alien who, pursuant to section 3 of this Act, is found, upon inspection by the immigration officer or after hearing before a special inquiry officer, to be admissible as an immigrant under the Immigration and Nationality Act [this chapter] at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the said Act [former subsec. (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

* * * * *

''[SEC. 11. Repealed. Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919.]''

CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN HUNGARIAN REFUGEES

Pub. L. 85–559, July 25, 1958, 72 Stat. 419, provided: ''That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212(d)(5) of the Immigration and Nationality Act [subsection (d)(5) of this section] subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act [sections 1225, 1226 and [former] 1227 of this title].

''SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the Immigration and Nationality Act [former subsection (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

''SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.''

PROC. NO. 4865. HIGH SEAS INTERDICTION OF ILLEGAL ALIENS

Proc. No. 4865, Sept. 29, 1981, 46 F.R. 48107, provided:

The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and with agencies of the Executive Branch of our Government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessels trafficking in illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

RONALD REAGAN.

PROC. NO. 7750. TO SUSPEND ENTRY AS IMMIGRANTS OR NONIMMIGRANTS OF PERSONS ENGAGED IN OR BENEFITING FROM CORRUPTION

Proc. No. 7750, Jan. 12, 2004, 69 F.R. 2287, provided:

In light of the importance of legitimate and transparent public institutions to world stability, peace, and development, and the serious negative effects that corruption of public institutions has on the United States efforts to promote security and to strengthen democratic institutions and free market systems, and in light of the importance to the United States and the international community of fighting corruption, as evidenced by the Third Global Forum on Fighting Corruption and Safeguarding Integrity and other intergovernmental efforts, I have determined that it is in the interests of the United States to take action to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of certain persons who have committed, participated in, or are beneficiaries of corruption in the performance of public functions where that corruption has serious adverse effects on international activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Public officials or former public officials whose solicitation or acceptance of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of their public functions has or had serious adverse effects on the national interests of the United States.

(b) Persons whose provision of or offer to provide any article of monetary value or other benefit to any public official in exchange for any act or omission in the performance of such official's public functions has or had serious adverse effects on the national interests of the United States.

(c) Public officials or former public officials whose misappropriation of public funds or interference with the judicial, electoral, or other public processes has or had serious adverse effects on the national interests of the United States.

(d) The spouses, children, and dependent household members of persons described in paragraphs (a), (b), and (c) above, who are beneficiaries of any articles of monetary value or other benefits obtained by such persons.

SEC. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of the person into the United States would not be contrary to the interests of the United States.

SEC. 3. Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such standards and procedures as the Secretary may establish.

SEC. 4. For purposes of this proclamation, ''serious adverse effects on the national interests of the United States'' means serious adverse effects on the international economic activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

SEC. 5. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

SEC. 6. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may, in the Secretary's discretion, establish.

SEC. 7. This proclamation is effective immediately.

SEC. 8. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 12324

Ex. Ord. No. 12324, Sept. 29, 1981, 46 F.R. 48109, which directed Secretary of State to enter into cooperative arrangements with foreign governments for purpose of preventing illegal migration to United States by sea, directed Secretary of the Department in which the Coast Guard is operating to issue appropriate instructions to Coast Guard to enforce suspension of entry of undocumented aliens and interdiction of any defined vessel carrying such aliens, and directed Attorney General to ensure fair enforcement of immigration laws and strict observance of international obligations of United States concerning those who genuinely flee persecution in their homeland, was revoked and replaced by Ex. Ord. No. 12807, §4, May 24, 1992, 57 F.R. 23134, set out below.

EX. ORD. NO. 12807. INTERDICTION OF ILLEGAL ALIENS

Ex. Ord. No. 12807, May 24, 1992, 57 F.R. 23133, as amended by Ex. Ord. No. 13286, §30, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and whereas:

(1) The President has authority to suspend the entry of aliens coming by sea to the United States without necessary documentation, to establish reasonable rules and regulations regarding, and other limitations on, the entry or attempted entry of aliens into the United States, and to repatriate aliens interdicted beyond the territorial sea of the United States;

(2) The international legal obligations of the United States under the United Nations Protocol Relating to the Status of Refugees (U.S. T.I.A.S. 6577; 19 U.S.T. 6223) to apply Article 33 of the United Nations Convention Relating to the Status of Refugees do not extend to persons located outside the territory of the United States;

(3) Proclamation No. 4865 [set out above] suspends the entry of all undocumented aliens into the United States by the high seas; and

(4) There continues to be a serious problem of persons attempting to come to the United States by sea without necessary documentation and otherwise illegally;

I, GEORGE BUSH, President of the United States of America, hereby order as follows:

SECTION 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

SEC. 2. (a) The Secretary of the Department in which the Coast Guard is operating, in consultation, where appropriate, with the Secretary of Defense, the Attorney General, and the Secretary of State, shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.

(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Secretary of Homeland Security, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

SEC. 3. This order is intended only to improve the internal management of the Executive Branch. Neither this order nor any agency guidelines, procedures, instructions, directives, rules or regulations implementing this order shall create, or shall be construed to create, any right or benefit, substantive or procedural (including without limitation any right or benefit under the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.]), legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person. Nor shall this order be construed to require any procedures to determine whether a person is a refugee.

SEC. 4. Executive Order No. 12324 is hereby revoked and replaced by this order.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

EX. ORD. NO. 13276. DELEGATION OF RESPONSIBILITIES CONCERNING UNDOCUMENTED ALIENS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

Ex. Ord. No. 13276, Nov. 15, 2002, 67 F.R. 69985, as amended by Ex. Ord. No. 13286, § 1, Feb. 28, 2003, 68 F.R. 10619, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and section 301 of title 3, United States Code, and in order to delegate appropriate responsibilities to Federal agencies for responding to migration of undocumented aliens in the Caribbean region, it is hereby ordered:

SECTION 1. *Duties and Authorities of Agency Heads.* Consistent with applicable law,

(a)(i) The Secretary of Homeland Security may maintain custody, at any location he deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Secretary of Homeland Security shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location.

(ii) The Secretary of Homeland Security may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should be returned to their country of origin or transit, or whether they are persons in need of protection who should not be returned without their consent. If the Secretary of Homeland Security institutes such screening, then until a determination is made, the Secretary of Homeland Security shall provide for the custody, care, safety, transportation, and other needs of the aliens. The Secretary of Homeland Security shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit.

(b) The Secretary of State shall provide for the custody, care, safety, transportation, and other needs of undocumented aliens interdicted or intercepted in the Caribbean region whom the Secretary of Homeland Security has identified as persons in need of protection. The Secretary of State shall provide for and execute a process for resettling such persons in need of protection, as appropriate, in countries other than their country of origin, and shall also undertake such diplomatic efforts as may be necessary to address the problem of illegal migration of aliens in the Caribbean region and to facilitate the return of those aliens who are determined not to be persons in need of protection.

(c)(i) The Secretary of Defense shall make available to the Secretary of Homeland Security and the Secretary of State, for the housing and care of any undocumented aliens interdicted or intercepted in the Caribbean region and taken into their custody, any facilities at Guantanamo Bay Naval Base that are excess to current military needs and the provision of which does not interfere with the operation and security of the base. The Secretary of Defense shall be responsible for providing access to such facilities and perimeter security. The Secretary of Homeland Security and the Secretary of State, respectively, shall be responsible for reimbursement for necessary supporting utilities.

(ii) In the event of a mass migration in the Caribbean region, the Secretary of Defense shall provide support to the Secretary of Homeland Security and the Secretary of State in carrying out the duties described in paragraphs (a) and (b) of this section regarding the custody, care, safety, transportation, and other needs of the aliens, and shall assume primary responsibility for these duties on a nonreimbursable basis as necessary to contain the threat to national security posed by the migration. The Secretary of Defense shall also provide support to the Coast Guard in carrying out the duties described in Executive Order 12807 of May 24, 1992 [set out above], regarding interdiction of migrants.

SEC. 2. *Definitions.* For purposes of this order, the term ''mass migration'' means a migration of undocumented aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President.

SEC. 3. *Scope*.

(a) Nothing in this order shall be construed to impair or otherwise affect the authorities and responsibilities set forth in Executive Order 12807 of May 24, 1992 [set out above].

(b) Nothing in this order shall be construed to make reviewable in any judicial or administrative proceeding, or otherwise, any action, omission, or matter that otherwise would not be reviewable.

(c) This order is intended only to improve the management of the executive branch. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, employees, or any other person.

(d) Any agency assigned any duties by this order may use the provisions of the Economy Act, 31 U.S.C. 1535 and 1536, to carry out such duties, to the extent permitted by such Act.

(e) This order shall not be construed to require any procedure to determine whether a person is a refugee or otherwise in need of protection.

GEORGE W. BUSH.

DELEGATION OF AUTHORITY UNDER SECTIONS 1182(f) AND 1185(a)(1) OF THIS TITLE

Memorandum of President of the United States, Sept. 24, 1999, 64 F.R. 55809, provided:

Memorandum for the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and in light of Proclamation 4865 of September 29, 1981 [set out above], I hereby delegate to the Attorney General the authority to:

(a) Maintain custody, at any location she deems appropriate, and conduct any screening she deems appropriate in her unreviewable discretion, of any undocumented person she has reason to believe is seeking to enter the United States and who is encountered in a vessel interdicted on the high seas through December 31, 2000; and

(b) Undertake any other appropriate actions with respect to such aliens permitted by law.

With respect to the functions delegated by this order, all actions taken after April 16, 1999, for or on behalf of the President that would have been valid if taken pursuant to this memorandum are ratified.

This memorandum is not intended to create, and should not be construed to create, any right or benefit, substantive or procedural, legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person, or to require any procedures to determine whether a person is a refugee.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§§ 1182a to 1182c. Repealed. Pub. L. 87–301, § 24(a)(1), (3), Sept. 26, 1961, 75 Stat. 657

Section 1182a, act Sept. 3, 1954, ch. 1254, § 4, 68 Stat. 1145, related to admission of aliens who were either convicted, or who admitted the commission, of a misdemeanor.

Section 1182b, Pub. L. 85–316, § 5, Sept. 11, 1957, 71 Stat. 640, permitted admission of an alien spouse, child or parent excludable for crime involving moral turpitude in cases of hardship, when not contrary to national welfare or security, and with Attorney General's consent, and under conditions and procedures prescribed by him. See section 1182(h) of this title.

Section 1182c, Pub. L. 85–316, § 6, Sept. 11, 1957, 71 Stat. 640; Pub. L. 86–253, § 1, Sept. 9, 1959, 73 Stat. 490, authorized admission of an alien spouse, child, or parent of a United States citizen afflicted with tuberculosis under terms, conditions and controls prescribed by Attorney General. See section 1182(g) of this title.

§ 1182d. Denial of visas to confiscators of American property

(a) Denial of visas

Except as otherwise provided in section 6091 of title 22, and subject to subsection (b) of this section, the Secretary of State may deny the issuance of a visa to any alien who—

(1) through the abuse of position, including a governmental or political party position, converts or has converted for personal gain real property that has been confiscated or expropriated, a claim to which is owned by a national of the United States, or who is complicit in such a conversion; or

(2) induces any of the actions or omissions described in paragraph (1) by any person.

(b) Exceptions

Subsection (a) of this section shall not apply to—

(1) any country established by international mandate through the United Nations; or

(2) any territory recognized by the United States Government to be in dispute.

(c) Reporting requirement

Not later than 6 months after October 21, 1998, and every 12 months thereafter, the Secretary of State shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report, including—

(1) a list of aliens who have been denied a visa under this subsection; and

(2) a list of aliens who could have been denied a visa under subsection (a) of this section but were issued a visa and an explanation as to why each such visa was issued.

(Pub. L. 105–277, div. G, subdiv. B, title XXII, § 2225, Oct. 21, 1998, 112 Stat. 2681–819.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1182e. Denial of entry into United States of foreign nationals engaged in establishment or enforcement of forced abortion or sterilization policy

(a) Denial of entry

Notwithstanding any other provision of law, the Secretary of State may not issue any visa to, and the Attorney General may not admit to the United States, any foreign national whom the Secretary finds, based on credible and specific information, to have been directly involved in the establishment or enforcement of population control policies forcing a woman to undergo an abortion against her free choice or forcing a man or woman to undergo sterilization against his or her free choice, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such policies.

(b) Exceptions

The prohibitions in subsection (a) of this section shall not apply in the case of a foreign national who is a head of state, head of government, or cabinet level minister.

(c) Waiver

The Secretary of State may waive the prohibitions in subsection (a) of this section with respect to a foreign national if the Secretary—

(1) determines that it is important to the national interest of the United States to do so; and

(2) provides written notification to the appropriate congressional committees containing a justification for the waiver.

(Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title VIII, § 801], Nov. 29, 1999, 113 Stat. 1536, 1501A–468.)

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1182f. Denial of entry into United States of Chinese and other nationals engaged in coerced organ or bodily tissue transplantation

(a) Denial of entry

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, the Secretary shall direct consular officers not to issue a visa to any person whom the Secretary finds, based on credible and specific information, to have been directly involved with the coercive transplantation of human organs or bodily tissue, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such practices.

(b) Exception

The prohibitions in subsection (a) of this section do not apply to an applicant who is a head of state, head of government, or cabinet-level minister.

(c) Waiver

The Secretary may waive the prohibitions in subsection (a) of this section with respect to a foreign national if the Secretary—

(1) determines that it is important to the national interest of the United States to do so; and

(2) not later than 30 days after the issuance of a visa, provides written notification to the appropriate congressional committees containing a justification for the waiver.

(Pub. L. 107–228, div. A, title II, § 232, Sept. 30, 2002, 116 Stat. 1372.)

CODIFICATION

Section was enacted as part of the Department of State Authorization Act, Fiscal Year 2003, and also as part of the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Immigration and Nationality Act which comprises this chapter.

DEFINITIONS

For definitions of ''Secretary'' and ''appropriate congressional committees'' as used in this section, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.

§ 1183. Admission of aliens on giving bond or undertaking; return upon permanent departure

An alien inadmissible under paragraph (4) of section 1182(a) of this title may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title) upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge, irrespective of whether a demand for payment of public expenses has been made.

(June 27, 1952, ch. 477, title II, ch. 2, § 213, 66 Stat. 188; Pub. L. 91–313, § 1, July 10, 1970, 84 Stat. 413; Pub. L. 101–649, title VI, § 603(a)(8), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104–208, div. C, title III, § 308(d)(3)(A), title V, § 564(f), Sept. 30, 1996, 110 Stat. 3009–617, 3009–684.)

AMENDMENTS

1996—Pub. L. 104–208, § 564(f), inserted ''(subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title)'' after ''in the discretion of the Attorney General''.

Pub. L. 104–208, § 308(d)(3)(A), substituted ''inadmissible'' for ''excludable''.

1990—Pub. L. 101–649 substituted ''(4)'' for ''(7) or (15)'' and inserted before period at end '', irrespective of whether a demand for payment of public expenses has been made'' after ''becomes a public charge''.

1970—Pub. L. 91–313 substituted provisions admitting, under the specified conditions, an alien excludable under pars. (7) or (15) of section 1182(a) of this title, for provisions admitting, under the specified conditions, any alien excludable because of the likelihood of becoming a public charge or because of physical disability other than tuberculosis in any form, leprosy, or a dangerous contagious disease, and struck out provisions authorizing a cash deposit with the Attorney General in lieu of a bond, such amount to be deposited in the United States Postal Savings System, and provi-

sions that the admission of the alien be consideration for the giving of the bond, undertaking, or cash deposit.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(3)(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 564(f) of Pub. L. 104–208 effective Sept. 30, 1996, see section 591 of Pub. L. 104–208, set out as a note under section 1101 of this title.

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.

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.

§ 1183a. Requirements for sponsor's affidavit of support

(a) Enforceability

(1) Terms of affidavit

No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 1182(a)(4) of this title unless such affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)[1] of this section), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2) of this section.

(2) Period of enforceability

An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) Termination of period of enforceability upon completion of required period of employment, etc.

(A) In general

An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(B) Qualifying quarters

For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C. 401 et seq.] an alien shall be credited with—

(i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and

(ii) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable under title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under clause (i) or (ii) if the parent or spouse (as the case may be) of such alien received any Federal means-tested public benefit (as provided under section 1613 of this title) during the period for which such qualifying quarter of coverage is so credited.

(C) Provision of information to save system

The Attorney General shall ensure that appropriate information regarding the application of this paragraph is provided to the system for alien verification of eligibility (SAVE) described in section 1137(d)(3) of the Social Security Act [42 U.S.C. 1320b–7(d)(3)].

(b) Reimbursement of government expenses

(1) Request for reimbursement

(A) Requirement

Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(B) Regulations

The Attorney General, in consultation with the heads of other appropriate Federal agencies, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

(2) Actions to compel reimbursement

(A) In case of nonresponse

If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

[1] See References in Text note below.

(B) In case of failure to pay

If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions

No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) Use of collection agencies

If the appropriate entity under paragraph (1)(A) requests reimbursement from the sponsor or brings an action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire an individual or other person to act on behalf of such entity acting under the authority of law for purposes of collecting any amounts owed.

(c) Remedies

Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31.

(d) Notification of change of address

(1) General requirement

The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently a resident within 30 days of any change of address of the sponsor during the period in which an affidavit of support is enforceable.

(2) Penalty

Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall, after notice and opportunity to be heard, be subject to a civil penalty of—

(A) not less than $250 or more than $2,000, or

(B) if such failure occurs with knowledge that the sponsored alien has received any means-tested public benefits (other than benefits described in section 1611(b), 1613(c)(2), or 1621(b) of this title) not less than $2,000 or more than $5,000.

The Attorney General shall enforce this paragraph under appropriate regulations.

(e) Jurisdiction

An action to enforce an affidavit of support executed under subsection (a) of this section may be brought against the sponsor in any appropriate court—

(1) by a sponsored alien, with respect to financial support; or

(2) by the appropriate entity of the Federal Government, a State or any political subdivision of a State, or by any other nongovernmental entity under subsection (b)(2) of this section, with respect to reimbursement.

(f) "Sponsor" defined

(1) In general

For purposes of this section the term ''sponsor'' in relation to a sponsored alien means an individual who executes an affidavit of support with respect to the sponsored alien and who—

(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

(B) is at least 18 years of age;

(C) is domiciled in any of the several States of the United States, the District of Columbia, or any territory or possession of the United States;

(D) is petitioning for the admission of the alien under section 1154 of this title; and

(E) demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.

(2) Income requirement case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(3) Active duty armed services case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but is on active duty (other than active duty for training) in the Armed Forces of the United States, is petitioning for the admission of the alien under section 1154 of this title as the spouse or child of the individual, and demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 100 percent of the Federal poverty line.

(4) Certain employment-based immigrants case

Such term also includes an individual—

(A) who does not meet the requirement of paragraph (1)(D), but is the relative of the sponsored alien who filed a classification petition for the sponsored alien as an employment-based immigrant under section 1153(b) of this title or who has a significant ownership interest in the entity that filed such a petition; and

(B)(i) who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or

(ii) does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(5) Non-petitioning cases

Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—

(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(i) the individual petitioning under section 1154 of this title for the classification of such alien died after the approval of such petition; and

(ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 1155 of this title would be inappropriate.

(6) Demonstration of means to maintain income

(A) In general

(i) Method of demonstration

For purposes of this section, a demonstration of the means to maintain income shall include provision of a certified copy of the individual's Federal income tax return for the individual's 3 most recent taxable years and a written statement, executed under oath or as permitted under penalty of perjury under section 1746 of title 28 that the copies are certified copies of such returns.

(ii) Flexibility

For purposes of this section, aliens may demonstrate the means to maintain income through demonstration of significant assets of the sponsored alien or of the sponsor, if such assets are available for the support of the sponsored alien.

(iii) Percent of poverty

For purposes of this section, a reference to an annual income equal to at least a particular percentage of the Federal poverty line means an annual income equal to at least such percentage of the Federal poverty line for a family unit of a size equal to the number of members of the sponsor's household (including family and non-family dependents) plus the total number of other dependents and aliens sponsored by that sponsor.

(B) Limitation

The Secretary of State, or the Attorney General in the case of adjustment of status, may provide that the demonstration under subparagraph (A) applies only to the most recent taxable year.

(h)[2] "Federal poverty line" defined

For purposes of this section, the term ''Federal poverty line'' means the level of income equal to the official poverty line (as defined by the Director of the Office of Management and Budget, as revised annually by the Secretary of Health and Human Services, in accordance with section 9902(2) of title 42) that is applicable to a family of the size involved.

[2] So in original. Section enacted without a subsec. (g).

(i) Sponsor's social security account number required to be provided

(1) An affidavit of support shall include the social security account number of each sponsor.

(2) The Attorney General shall develop an automated system to maintain the social security account number data provided under paragraph (1).

(3) The Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and the Senate setting forth—

(A) for the most recent fiscal year for which data are available the number of sponsors under this section and the number of sponsors in compliance with the financial obligations of this section; and

(B) a comparison of such numbers with the numbers of such sponsors for the preceding fiscal year.

(June 27, 1952, ch. 477, title II, ch. 2, §213A, as added Pub. L. 104–193, title IV, §423(a), Aug. 22, 1996, 110 Stat. 2271; amended Pub. L. 104–208, div. C, title V, §551(a), Sept. 30, 1996, 110 Stat. 3009–675; Pub. L. 107–150, §2(a)(1), (3), Mar. 13, 2002, 116 Stat. 74, 75.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in subsec. (a)(1)(B), does not define ''means-tested public benefit''.

The Social Security Act, referred to in subsec. (a)(3)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) 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

2002—Subsec. (f)(2), (4)(B)(ii). Pub. L. 107–150, §2(a)(3), substituted ''paragraph (5)(A)'' for ''paragraph (5)''.

Subsec. (f)(5). Pub. L. 107–150, §2(a)(1), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.''

1996—Pub. L. 104–208 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f) relating to requirements for sponsor's affidavits of support.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–150 applicable with respect to deaths occurring before, on, or after Mar. 13, 2002, except that, in case of death occurring before such date, such amendments shall apply only if (1) the sponsored alien requests Attorney General to reinstate the classification petition that was filed with respect to the alien by deceased and approved under section 1154 of this title before such death and demonstrates that he or she is able to satisfy requirement of section 1182(a)(4)(C)(ii) of this title by reason of such amendments; and (2) Attorney General reinstates such petition after making the determination described in subsec. (f)(5)(B)(ii) of this section, see section 2(b) of Pub. L. 107–150, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS; PROMULGATION OF FORM

Section 551(c) of div. C of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section, amending sections 1631 and 1632 of this title, and repealing provisions set out as a note under this section] shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under paragraph (2).

''(2) PROMULGATION OF FORM.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the heads of other appropriate agencies, shall promulgate a standard form for an affidavit of support consistent with the provisions of section 213A of the Immigration and Nationality Act [this section], as amended by subsection (a).''

Section 423(c) of Pub. L. 104–193 provided that subsec. (a) of this section was applicable to affidavits of support executed on or after a date specified by Attorney General, which date was to be not earlier than 60 days (and not later than 90 days) after date Attorney General formulated form for such affidavits under subsec. (b) of this section, prior to repeal by Pub. L. 104–208, div. C, title V, § 551(b)(2), Sept. 30, 1996, 104 Stat. 3009–679.

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.

FEES RELATING TO AFFIDAVITS OF SUPPORT

Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 232], Nov. 29, 1999, 113 Stat. 1536, 1501A–425, as amended by Pub. L. 107–228, div. A, title II, § 211(b), Sept. 30, 2002, 116 Stat. 1365, provided that:

''(a) AUTHORITY TO CHARGE FEE.—The Secretary of State may charge and retain a fee or surcharge for services provided by the Department of State to any sponsor who provides an affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) to ensure that such affidavit is properly completed before it is forwarded to a consular post for adjudication by a consular officer in connection with the adjudication of an immigrant visa. Such fee or surcharge shall be in addition to and separate from any fee imposed for immigrant visa application processing and issuance, and shall recover only the costs of such services not recovered by such fee.

''(b) LIMITATION.—Any fee established under subsection (a) shall be charged only once to a sponsor or joint sponsors who file essentially duplicative affidavits of support in connection with separate immigrant visa applications from the spouse and children of any petitioner required by the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] to petition separately for such persons.

''(c) TREATMENT OF FEES.—Fees collected under the authority of subsection (a) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of providing consular services. Such fees shall remain available for obligation until expended.''

PILOT PROGRAMS TO REQUIRE BONDING

Section 564 of div. C of Pub. L. 104–208 provided that:

''(a) IN GENERAL.—

''(1) The Attorney General of the United States shall establish a pilot program in 5 district offices of the Immigration and Naturalization Service to require aliens to post a bond in addition to the affidavit requirements under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631). Any pilot program established pursuant to this subsection shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in section 213A(d)(2)(B) of the Immigration and Nationality Act (as amended by section 551(a) of this division) for the alien and the alien's dependents and shall remain in effect until the departure, naturalization, or death of the alien.

''(2) Suit on any such bonds may be brought under the terms and conditions set forth in section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

''(b) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General shall issue regulations for establishing the pilot programs, including—

''(1) criteria and procedures for—

''(A) certifying bonding companies for participation in the program, and

''(B) debarment of any such company that fails to pay a bond, and

''(2) criteria for setting the amount of the bond to assure that the bond is in an amount that is not less than the cost of providing benefits under the programs described in subsection (a)(1) for the alien and the alien's dependents for 6 months.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

''(d) ANNUAL REPORTING REQUIREMENT.—Beginning 9 months after the date of implementation of the pilot program, the Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and the Senate a report on the effectiveness of the program. The Attorney General shall submit a final evaluation of the program not later than 1 year after termination.

''(e) SUNSET.—The pilot program under this section shall terminate after 3 years of operation.

''(f) BONDS IN ADDITION TO SPONSORSHIP AND DEEMING REQUIREMENTS.—[Amended section 1183 of this title.]''

BENEFITS NOT SUBJECT TO REIMBURSEMENT

Section 423(d) of Pub. L. 104–193, as amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(3)(B), (f)(3)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 106–78, title VII, § 752(b)(6), Oct. 22, 1999, 113 Stat. 1169, provided that: ''Requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] shall not apply with respect to the following:

''(1) Medical assistance described in section 401(b)(1)(A) [8 U.S.C. 1611(b)(1)(A)] or assistance described in section 411(b)(1) [8 U.S.C. 1621(b)(1)].

''(2) Short-term, non-cash, in-kind emergency disaster relief.

''(3) Assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

''(4) Assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

''(5) Public health assistance for immunizations (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

''(6) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.] for a parent or a child, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431 [8 U.S.C. 1641]).

''(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-

kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

''(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 1101 et seq., 1134 et seq., 1135 et seq., 42 U.S.C. 2751 et seq.], and titles III, VII, and VIII of the Public Health Service Act [42 U.S.C. 241 et seq., 292 et seq., 296 et seq.].

''(9) Benefits under the Head Start Act [42 U.S.C. 9831 et seq.].

''(10) Means-tested programs under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

''(11) Benefits under the [sic] title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].''

§ 1184. Admission of nonimmigrants

(a) Regulations

(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. No alien admitted to the United States without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(O) of this title shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(P) of this title shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 1101(a)(15)(P) of this title, the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(b) Presumption of status; written waiver

Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of this title. An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act [22 U.S.C. 288 et seq.], or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257(b) of this title.

(c) Petition of importing employer

(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of section 1101(a)(15) of this title (excluding nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, the term ''appropriate agencies of Government'' means the Department of Labor and includes the Department of Agriculture. The provisions of section 1188 of this title shall apply to the question of importing any alien as a nonimmigrant under section 1101(a)(15)(H)(ii)(a) of this title.

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 1101(a)(15)(L) of this title instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for admission of aliens covered under such a petition.

(B) For purposes of section 1101(a)(15)(L) of this title, an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 1101(a)(15)(L) of this title within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for—

(i) a nonimmigrant admitted to render services in a managerial or executive capacity

under section 1101(a)(15)(L) of this title shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 1101(a)(15)(L) of this title shall not exceed 5 years.

(E) In the case of an alien spouse admitted under section 1101(a)(15)(L) of this title, who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ''employment authorized'' endorsement or other appropriate work permit.

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) of this title and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) of this title if—

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

(3) The Attorney General shall approve a petition—

(A) with respect to a nonimmigrant described in section 1101(a)(15)(O)(i) of this title only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

(B) with respect to a nonimmigrant described in section 1101(a)(15)(O)(ii) of this title after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) For purposes of section 1101(a)(15)(P)(i)(a) of this title, an alien is described in this subparagraph if the alien—

(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(II) is a professional athlete, as defined in section 1154(i)(2) of this title;

(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if—

(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country;

(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and

(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or

(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production; and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing—

(I) as such an athlete with respect to a specific athletic competition; or

(II) in the case of an individual described in clause (i)(IV), in a specific theatrical ice skating production or tour.

(B)(i) For purposes of section 1101(a)(15)(P)(i)(b) of this title, an alien is described in this subparagraph if the alien—

(I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,

(II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and

(III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

(iv) The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 1101(a)(15)(P) of this title.

(D) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 1101(a)(15)(P) of this title only after consultation in accordance with paragraph (6).

(E) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 1101(a)(15)(P)(ii) of this title only after consultation with labor organizations representing artists and entertainers in the United States.

(F)(i) No nonimmigrant visa under section 1101(a)(15)(P)(i)(a) of this title shall be issued to any alien who is a national of a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety, national security, or national interest of the United States. In making a determination under this subparagraph, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

(ii) In this subparagraph, the term ''state sponsor of international terrorism'' means any country the government of which has been determined by the Secretary of State under any of the laws specified in clause (iii) to have repeatedly provided support for acts of international terrorism.

(iii) The laws specified in this clause are the following:

(I) Section 2405(j)(1)(A) of title 50, Appendix (or successor statute).

(II) Section 2780(d) of title 22.

(III) Section 2371(a) of title 22.

(G) The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than 1 alien as a nonimmigrant under section 1101(a)(15)(P)(i)(a) of this title.

(H) The Secretary of Homeland Security shall permit an athlete, or the employer of an athlete, to seek admission to the United States for such athlete under a provision of this Act other than section 1101(a)(15)(P)(i) of this title if the athlete is eligible under such other provision.

(5)(A) In the case of an alien who is provided nonimmigrant status under section 1101(a)(15)(H)(i)(b) or 1101(a)(15)(H)(ii)(b) of this title and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

(B) In the case of an alien who is admitted to the United States in nonimmigrant status under section 1101(a)(15)(O) or 1101(a)(15)(P) of this title and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(i) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a peer group (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(ii) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the skill area involved.

(iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(P)(i) or 1101(a)(15)(P)(iii) of this title, the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment involved.

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion.

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

(E)(i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 1101(a)(15)(O) or 1101(a)(15)(P) of this title to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 1101(a)(15)(O)(i) or 1101(a)(15)(P)(i) of this title in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a nongovernmental entity shall be construed as permitting the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 1101(a)(15) of this title the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before[1] a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(i)(b) of this title;

(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or

(iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be $1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(10) An amended H–1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.

(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 1182(t) of this title—

(i) in order that an alien may be initially granted nonimmigrant status described in section 1101(a)(15)(H)(i)(b1) of this title; or

(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) of this section for an alien having such status to obtain certain extensions of stay.

(B) The amount of the fee shall be the same as the amount imposed by the Secretary of Homeland Security under paragraph (9), except that if such paragraph does not authorize such Secretary to impose any fee, no fee shall be imposed under this paragraph.

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 1101(a)(15) of this title; or

(ii) to obtain authorization for an alien having such status to change employers.

(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 1101(a)(15)(L) of this title, if the alien is covered under a blanket petition described in paragraph (2)(A).

[1] So in original. The word ''before'' probably should not appear.

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $500.

(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(v) of this title.

(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 1101(a)(15)(H)(ii)(b) of this title.

(B) The amount of the fee imposed under subparagraph (A) shall be $150.

(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 1101(a)(15)(H)(ii)(b) of this title or a willful misrepresentation of a material fact in such petition—

(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 1154 of this title or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

(B) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

(D) In this paragraph, the term ''substantial failure'' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.

(d) Issuance of visa to fiancée or fiancé of citizen

(1) A visa shall not be issued under the provisions of section 1101(a)(15)(K)(i) of this title until the consular officer has received a petition filed in the United States by the fiancée and fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 1229a and 1231 of this title.

(2)(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that—

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that—

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms ''domestic violence'', ''sexual assault'', ''child abuse and neglect'', ''dating violence'', ''elder abuse'', and ''stalking'' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.[2]

(B) The term ''specified crime'' means the following:

[2] See References in Text note below.

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(e) Nonimmigrant professionals and annual numerical limit

(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as ''NAFTA'') to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this chapter, including the issuance of entry documents and the application of subsection (b) of this section, such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 1101(a)(15) of this title. The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of NAFTA.

(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 2155 of title 19;

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

(i) the action proposed to be taken and the reasons therefor, and

(ii) the advice obtained under subparagraph (A);

(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and

(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 1182(m) of this title, in the case of a registered nurse, or the application requirement of section 1182(n) of this title, in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c) of this section, to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 1182(m) and 1182(n) of this title, and the Attorney General, with respect to subsection (c) of this section.

(6) In the case of an alien spouse admitted under section 1101(a)(15)(E) of this title, who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ''employment authorized'' endorsement or other appropriate work permit.

(f) Denial of crewmember status in case of certain labor disputes

(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 1101(a)(15)(D) of this title if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 116 of title 46) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

(2) An alien described in paragraph (1)—

(A) may not be paroled into the United States pursuant to section 1182(d)(5) of this title unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

(B) shall be considered not to be a bona fide crewman for purposes of section 1282(b) of this title.

(3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;

(B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and

(C) shall continue to provide the same services that such alien provided as such a crewman.

(g) Temporary workers and trainees; limitation on numbers

(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 1101(a)(15)(H)(i)(b) of this title, may not exceed—

(i) 65,000 in each fiscal year before fiscal year 1999;

(ii) 115,000 in fiscal year 1999;

(iii) 115,000 in fiscal year 2000;

(iv) 195,000 in fiscal year 2001;

(v) 195,000 in fiscal year 2002;

(vi) 195,000 in fiscal year 2003; and

(vii) 65,000 in each succeeding fiscal year; or

(B) under section 1101(a)(15)(H)(ii)(b) of this title may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title, the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 1101(a)(15)(H)(i)(b) of this title who—

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 1001(a) of title 20), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 1101(a)(15)(H)(i)(b) of this title, who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).

(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c) of this section, toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

(8)(A) The agreements referred to in section 1101(a)(15)(H)(i)(b1) of this title are—

(i) the United States-Chile Free Trade Agreement; and

(ii) the United States-Singapore Free Trade Agreement.

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 1101(a)(15)(H)(i)(b1) of this title.

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 1101(a)(15)(H)(i)(b) of this title may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to

the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(9)(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under section 1101(a)(15)(H)(ii)(b) of this title shall include, with respect to a returning worker—

(i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under section 1101(a)(15)(H)(ii)(b) of this title;

(ii) the full name of the alien; and

(iii) a certification to the Department of Homeland Security that the alien is a returning worker.

(C) An H–2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by—

(i) the Department of State; or

(ii) if the alien is visa exempt or seeking to change to status under section 1101 (a)(15)(H)(ii)(b) of this title, the Department of Homeland Security.

(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens subject to such numerical limits who enter the United States pursuant to a visa or are accorded nonimmigrant status under section 1101(a)(15)(H)(ii)(b) of this title during the first 6 months of such fiscal year is not more than 33,000.

(11)(A) The Secretary of State may not approve a number of initial applications submitted for aliens described in section 1101(a)(15)(E)(iii) of this title that is more than the applicable numerical limitation set out in this paragraph.

(B) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(C) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

(h) Intention to abandon foreign residence

The fact that an alien is the beneficiary of an application for a preference status filed under section 1154 of this title or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 1101(a)(15) of this title or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 1258 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i) "Specialty occupation" defined

(1) Except as provided in paragraph (3), for purposes of section 1101(a)(15)(H)(i)(b) of this title, section 1101(a)(15)(E)(iii) of this title, and paragraph (2), the term ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b) of this title, the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

(3) For purposes of section 1101(a)(15)(H)(i)(b1) of this title, the term ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of specialized knowledge; and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j) Labor disputes

(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this chapter except section 1182(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and

pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 1101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

(k) Numerical limitations; period of admission; conditions for admission and stay; annual report

(1) The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(i) of this title in any fiscal year may not exceed 200. The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(ii) of this title in any fiscal year may not exceed 50.

(2) The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General.

(3) As a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant—

(A) shall report not less often than quarterly to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission;

(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal, any action for removal of the alien instituted before the alien obtains lawful permanent resident status; and

(D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

(4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning—

(A) the number of such nonimmigrants admitted;

(B) the number of successful criminal prosecutions or investigations resulting from cooperation of such aliens;

(C) the number of terrorist acts prevented or frustrated resulting from cooperation of such aliens;

(D) the number of such nonimmigrants whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (3)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

***(l)* Restrictions on waiver**

(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 1182(e) of this title on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency—

(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic

area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 5; and

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.

(2)(A) Notwithstanding section 1258(a)(2) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and section 1182(e) of this title to that of an alien described in section 1101(a)(15)(H)(i)(b) of this title. The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section 1182(e) of this title shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section 1101(a)(27)(H) of this title, if—

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

(m) Nonimmigrant elementary and secondary school students

(1) An alien may not be accorded status as a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study—

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and (ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 1101(a)(15)(F) of this title shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(n) Increased portability of H–1B status

(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(b) of this title is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a) of this section. Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(A) who has been lawfully admitted into the United States;

(B) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Attorney General; and

(C) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

***(o)* Nonimmigrants guilty of trafficking in persons**

(1) No alien shall be eligible for admission to the United States under section 1101(a)(15)(T) of this title if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 7102 of title 22).

(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 1101(a)(15)(T) of this title may not exceed 5,000.

(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(T)(i) of this title, and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(T)(ii) of this title, if the

alien attains 21 years of age after such parent's application was filed but while it was pending.

(5) An alien described in clause (i) of section 1101(a)(15)(T) of this title shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 1101(a)(15)(T)(i)(III)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons (as defined in section 7102 of title 22) appear to have been involved, shall be considered.

(7)(A) Except as provided in subparagraph (B), an alien who is issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(T) of this title may be granted such status for a period of not more than 4 years.

(B) An alien who is issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(T) of this title may extend the period of such status beyond the period described in subparagraph (A) if a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking or certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity.

(p) Requirements applicable to section 1101(a)(15)(U) visas

(1) Petitioning procedures for section 1101(a)(15)(U) visas

The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien ''has been helpful, is being helpful, or is likely to be helpful'' in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(2) Numerical limitations

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 1101(a)(15)(U)(i) of this title, and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) Duties of the Attorney General with respect to "U" visa nonimmigrants

With respect to nonimmigrant aliens described in subsection (a)(15)(U) of section 1101 of this title—

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) Credible evidence considered

In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) Nonexclusive relief

Nothing in this subsection limits the ability of aliens who qualify for status under section 1101(a)(15)(U) of this title to seek any other immigration benefit or status for which the alien may be eligible.

(6) Duration of status

The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity.

(q) Employment of nonimmigrants described in section 1101(a)(15)(V)

(1) In the case of a nonimmigrant described in section 1101(a)(15)(V) of this title—

(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment; and

(B) the period of authorized admission as such a nonimmigrant shall terminate 30 days after the date on which any of the following is denied:

(i) The petition filed under section 1154 of this title to accord the alien a status under section 1153(a)(2)(A) of this title (or, in the case of a child granted nonimmigrant status based on eligibility to receive a visa under section 1153(d) of this title, the petition filed to accord the child's parent a status under section 1153(a)(2)(A) of this title).

(ii) The alien's application for an immigrant visa pursuant to the approval of such petition.

(iii) The alien's application for adjustment of status under section 1255 of this title pursuant to the approval of such petition.

(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 1101(a)(15)(V) of this

title, the grounds for inadmissibility specified in section 1182(a)(9)(B) of this title shall not apply.

(3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 1101(a)(15)(V) of this title, if the alien—

(A) applies for such adjustment;

(B) satisfies the requirements of such section; and

(C) is eligible to be admitted to the United States, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 1182(a) of this title shall not apply.

(r) Visas of nonimmigrants described in section 1101(a)(15)(K)(ii)

(1) A visa shall not be issued under the provisions of section 1101(a)(15)(K)(ii) of this title until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime.

(2) In the case of an alien seeking admission under section 1101(a)(15)(K)(ii) of this title who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 1182(a)(7)(B) of this title if the alien is not at the time of application for admission in possession of a valid nonimmigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

(3) In the case of a nonimmigrant described in section 1101(a)(15)(K)(ii) of this title, and any child of such a nonimmigrant who was admitted as accompanying, or following to join, such a nonimmigrant, the period of authorized admission shall terminate 30 days after the date on which any of the following is denied:

(A) The petition filed under section 1154 of this title to accord the principal alien status under section 1151(b)(2)(A)(i) of this title.

(B) The principal alien's application for an immigrant visa pursuant to the approval of such petition.

(C) The principal alien's application for adjustment of status under section 1255 of this title pursuant to the approval of such petition.

(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiancé(e)s and spouses under clauses (i) and (ii) of section 1101(a)(15)(K) of this title. Upon approval of a second visa petition under section 1101(a)(15)(K) of this title for a fiancé(e) or spouse filed by the same United States citizen petitioner, the petitioner shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiancé(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

(B)(i) Once a petitioner has had two fiancé(e) or spousal petitions approved under clause (i) or (ii) of section 1101(a)(15)(K) of this title, if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiancé(e) or spousal petitions listed in the database.

(ii) A copy of the information and resources pamphlet on domestic violence developed under section 1375a(a) of this title shall be mailed to the beneficiary along with the notification required in clause (i).

(5) In this subsection:

(A) The terms ''domestic violence'', ''sexual assault'', ''child abuse and neglect'', ''dating violence'', ''elder abuse'', and ''stalking'' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.[3]

(B) The term ''specified crime'' means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(June 27, 1952, ch. 477, title II, ch. 2, § 214, 66 Stat. 189; Pub. L. 91–225, § 3, Apr. 7, 1970, 84 Stat. 117; Pub. L. 98–454, title VI, § 602(b), Oct. 5, 1984, 98 Stat. 1737; Pub. L. 99–603, title III, §§ 301(b), 313(b), Nov. 6, 1986, 100 Stat. 3411, 3438; Pub. L. 99–639, § 3(a), (c), Nov. 10, 1986, 100 Stat. 3542; Pub. L. 100–449, title III, § 307(b), Sept. 28, 1988, 102 Stat. 1877; Pub. L. 100–525, § 2(*l*)(1), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–649, title II, §§ 202(a), 205(a), (b), (c)(2), 206(b), 207(b), Nov. 29, 1990, 104 Stat. 5014, 5019, 5020, 5023, 5025; Pub. L. 102–232, title II, §§ 202(a), 203(b), 204, 205(d), (e), 206(a), (c)(2), 207(a), (c)(1), title III, § 303(a)(10)–(12), Dec. 12, 1991, 105 Stat. 1737–1741, 1748; Pub. L. 103–182, title III, § 341(b), (c), Dec. 8, 1993, 107 Stat. 2116, 2117; Pub. L. 103–322, title XIII, § 130003(b)(2), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 103–416, title II, § 220(b), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. C, title III, § 308(e)(1)(D), (2)(B), (f)(1)(G), (H), (3)(B), (g)(5)(A)(i), (7)(A), title VI, §§ 621, 622(c), 625(a)(1), 671(a)(3)(A), (e)(4)(A), Sept. 30, 1996, 110 Stat. 3009–619 to 3009–621, 3009–623, 3009–695, 3009–699, 3009–721, 3009–723; Pub. L. 105–65, title I, § 108, Oct. 27, 1997, 111 Stat. 1350; Pub. L. 105–277, div. C, title IV, §§ 411(a), 414(a), Oct. 21, 1998, 112 Stat. 2681–642, 2681–651; Pub. L. 106–104, § 2, Nov. 13, 1999, 113 Stat. 1483; Pub. L. 106–311, § 1, Oct. 17, 2000, 114 Stat. 1247; Pub. L. 106–313, title I, §§ 102(a), 103, 105(a), 108, Oct. 17,

[3] See References in Text note below.

2000, 114 Stat. 1251–1253, 1255; Pub. L. 106–386, div. A, § 107(e)(2), div. B, title V, § 1513(c), Oct. 28, 2000, 114 Stat. 1478, 1535; Pub. L. 106–396, title IV, § 401, Oct. 30, 2000, 114 Stat. 1647; Pub. L. 106–553, § 1(a)(2) [title XI, §§ 1102(b), (d)(1), 1103(b), (c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–142, 2762A–144, 2762A–145; Pub. L. 107–45, § 1, Oct. 1, 2001, 115 Stat. 258; Pub. L. 107–124, Jan. 16, 2002, 115 Stat. 2402; Pub. L. 107–125, §§ 1, 2(a), Jan. 16, 2002, 115 Stat. 2403; Pub. L. 107–273, div. C, title I, § 11018(a), Nov. 2, 2002, 116 Stat. 1825; Pub. L. 107–274, § 2(c), Nov. 2, 2002, 116 Stat. 1923; Pub. L. 108–77, title IV, §§ 402(a)(2), (d)(1), 403, 404, Sept. 3, 2003, 117 Stat. 940, 946, 947; Pub. L. 108–78, title IV, § 402, Sept. 3, 2003, 117 Stat. 970; Pub. L. 108–193, §§ 4(b)(2), 8(a)(3), Dec. 19, 2003, 117 Stat. 2878, 2886; Pub. L. 108–441, § 1(b)–(d), Dec. 3, 2004, 118 Stat. 2630; Pub. L. 108–447, div. J, title IV, §§ 412(a), 413(a), 422(b), 425(a) 426(a), Dec. 8, 2004, 118 Stat. 3351–3353, 3356, 3357; Pub. L. 109–13, div. B, title IV, §§ 402(a), 403(a), 404(a), 405, title V, § 501(b), (c), May 11, 2005, 119 Stat. 318–322; Pub. L. 109–162, title VIII, §§ 821(a), (b), (c)(2), 832(a)(1),(2), Jan. 5, 2006, 119 Stat. 3062, 3066, 3067; Pub. L. 109–364, div. A, title X, § 1074(a), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 109–463, § 2, Dec. 22, 2006, 120 Stat. 3477.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (b), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, referred to in subsecs. (d)(3)(A) and (r)(5)(A), is section 3 of Pub. L. 109–162, which enacted sections 3796gg–2 and 13925 of Title 42, The Public Health and Welfare, amended sections 3796gg–3, 3796hh–4, 10420, 13975, and 14039 of Title 42, repealed former section 3796gg–2 of Title 42, and amended provisions set out as a note under section 3796gg–2 of Title 42.

CODIFICATION

In subsec. (f)(1), ''section 116 of title 46'' substituted for ''section 2101(46) of title 46, United States Code'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, section 4 of which enacted subtitle I of Title 46, Shipping.

AMENDMENTS

2006—Subsec. (c)(4)(A)(i), (ii). Pub. L. 109–463, § 2(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and

''(ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.''

Subsec. (c)(4)(F) to (H). Pub. L. 109–463, § 2(b)–(d), added subpars. (F) to (H).

Subsec. (d). Pub. L. 109–162, § 832(a)(1), designated existing provisions as par. (1), inserted after second sentence ''Such information shall include information on any criminal convictions of the petitioner for any specified crime.'', substituted ''Secretary of Homeland Security'' for ''Attorney General'' wherever appearing, and added pars. (2) and (3).

Subsec. (g)(9)(A). Pub. L. 109–364, § 1074(a)(1), substituted ''Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007'' for ''Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the fiscal year of the approved start date of a petition for a nonimmigrant worker described in section 1101(a)(15)(H)(ii)(b) of this title shall not be counted toward such limitation for the fiscal year in which the petition is approved''.

Subsec. (g)(9)(B). Pub. L. 109–364, § 1074(a)(2), substituted ''to admit or otherwise provide status under section 1101(a)(15)(H)(ii)(b) of this title'' for ''referred to in subparagraph (A)'' in introductory provisions.

Subsec. (*l*)(2)(A). Pub. L. 109–162, § 821(c)(2), substituted ''1258(a)(2)'' for ''1258(2)''.

Subsec. (*o*)(7). Pub. L. 109–162, § 821(a), added par. (7).

Subsec. (p)(6). Pub. L. 109–162, § 821(b), added par. (6).

Subsec. (r)(1). Pub. L. 109–162, § 832(a)(2)(A), inserted at end ''Such information shall include information on any criminal convictions of the petitioner for any specified crime.''

Subsec. (r)(4), (5). Pub. L. 109–162, § 832(a)(2)(B), added pars. (4) and (5).

2005—Subsec. (c)(13). Pub. L. 109–13, § 403(a), added par. (13).

Subsec. (c)(14). Pub. L. 109–13, § 404(a), added par. (14).

Subsec. (g)(9). Pub. L. 109–13, § 402(a), added par. (9).

Subsec. (g)(10). Pub. L. 109–13, § 405, added par. (10).

Subsec. (g)(11). Pub. L. 109–13, § 501(b), added par. (11).

Subsec. (i)(1). Pub. L. 109–13, § 501(c), inserted '', section 1101(a)(15)(E)(iii) of this title,'' after ''section 1101(a)(15)(H)(i)(b) of this title'' in introductory provisions.

2004—Subsec. (c)(2)(A). Pub. L. 108–447, § 413(a), struck out at end ''In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.''

Subsec. (c)(2)(F). Pub. L. 108–447, § 412(a), added subpar. (F).

Subsec. (c)(9)(A). Pub. L. 108–447, § 422(b)(1), struck out ''October 1, 2003'' before ''a petition under paragraph (1)'' in introductory provisions.

Subsec. (c)(9)(B). Pub. L. 108–447, § 422(b)(2), (3), substituted ''$1,500'' for ''$1,000'' and inserted before period at end ''except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)''.

Subsec. (c)(12). Pub. L. 108–447, § 426(a), added par. (12).

Subsec. (g)(5). Pub. L. 108–447, § 425(a)(1), struck out ''is employed (or has received an offer of employment) at'' after ''section 1101(a)(15)(H)(i)(b) of this title who'' in introductory provisions.

Subsec. (g)(5)(A). Pub. L. 108–447, § 425(a)(2), inserted ''is employed (or has received an offer of employment) at'' before ''an institution'' and struck out ''or'' at end.

Subsec. (g)(5)(B). Pub. L. 108–447, § 425(a)(3), inserted ''is employed (or has received an offer of employment) at'' before ''a nonprofit'' and substituted ''; or'' for period at end.

Subsec. (g)(5)(C). Pub. L. 108–447, § 425(a)(4), added subpar. (C).

Subsec. (*l*)(1)(D). Pub. L. 108–441, § 1(c), (d), substituted ''agrees to practice primary care or specialty medi-

cine'' for ''agrees to practice medicine'' and ''except that—'' for ''except that, in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary.'' and added cls. (i) to (iii).

Subsec. (*l*)(2)(A). Pub. L. 108–441, § 1(b), inserted at end ''The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.''

2003—Subsec. (b). Pub. L. 108–77, §§ 107(c), 404(1), temporarily substituted ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section)'' for ''(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 1101(a)(15) of this title)''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(1). Pub. L. 108–77, §§ 107(c), 404(2), temporarily substituted ''subparagraph (H), (L), (O), or (P)(i) of section 1101(a)(15) of this title (excluding nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title)'' for ''section 1101(a)(15)(H), (L), (O), or (P)(i) of this title''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(11). Pub. L. 108–77, §§ 107(c), 402(d)(1), temporarily added par. (11). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8). Pub. L. 108–77, §§ 107(c), 402(a)(2)(B), temporarily added par. (8). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8)(A). Pub. L. 108–78, §§ 107(c), 402(1), temporarily amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The agreement referred to in section 1101(a)(15)(H)(i)(b1) of this title is the United States-Chile Free Trade Agreement.'' See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8)(B)(ii). Pub. L. 108–78, §§ 107(c), 402(2), temporarily amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The annual numerical limitations described in clause (i) shall not exceed 1,400 for nationals of Chile for any fiscal year. For purposes of this clause, the term 'national' has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.'' See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (h). Pub. L. 108–77, §§ 107(c), 404(3), temporarily substituted ''(H)(i)(b) or (c)'' for ''(H)(i)''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (i)(1). Pub. L. 108–77, §§ 107(c), 402(a)(2)(A)(i), temporarily substituted ''Except as provided in paragraph (3), for purposes'' for ''For purposes''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (i)(3). Pub. L. 108–77, §§ 107(c), 402(a)(2)(A)(ii), temporarily added par. (3). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (j). Pub. L. 108–77, §§ 107(c), 403, temporarily designated existing provisions as par. (1), substituted ''this paragraph'' for ''this subsection'' in two places, and added par. (2). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (m). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (m), relating to increased portability of H–1B status, as (n).

Subsec. (n). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (m), relating to increased portability of H–1B status, as (n). Former subsec. (n), relating to nonimmigrants guilty of trafficking in persons, redesignated (*o*).

Subsec. (n)(3). Pub. L. 108–193, § 4(b)(2)(A), inserted ''siblings,'' before ''or parents''.

Subsec. (n)(4) to (6). Pub. L. 108–193, § 4(b)(2)(B), added pars. (4) to (6).

Subsec. (*o*). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (n) as (*o*). Former subsec. (*o*), relating to requirements applicable to section 1101(a)(15)(U) visas, redesignated (p). Another former subsec. (*o*), relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title, redesignated (q).

Subsec. (p). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (*o*), relating to requirements applicable to section 1101(a)(15)(U) visas, as (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (*o*), relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title, as (q).

Subsec. (r). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (p) as (r).

2002—Subsec. (c)(2)(A). Pub. L. 107–125, § 2(a), inserted at end ''In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.''

Subsec. (c)(2)(E). Pub. L. 107–125, § 1, added subpar. (E).

Subsec. (e)(6). Pub. L. 107–124 added par. (6).

Subsec. (*l*)(1)(B). Pub. L. 107–273 substituted ''30;'' for ''20;''.

Subsec. (m). Pub. L. 107–274 substituted ''clause (i) or (iii) of section 1101(a)(15)(F)'' for ''section 1101(a)(15)(F)(i)'' in two places in subsec. (m) relating to nonimmigrant elementary and secondary school students.

2001—Subsec. (k)(2). Pub. L. 107–45, § 1(2), redesignated par. (3) as (2).

Pub. L. 107–45, § 1(1), which directed that subsec. (k) be amended by striking (2), was executed by striking par. (2) to reflect the probable intent of Congress. Prior to amendment, par. (2) read as follows: ''No alien may be admitted into the United States as such a nonimmigrant more than 7 years after September 13, 1994.''

Subsec. (k)(3). Pub. L. 107–45, § 1(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (k)(4). Pub. L. 107–45, § 1(2), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (k)(4)(E). Pub. L. 107–45, § 1(3), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (k)(5). Pub. L. 107–45, § 1(2), redesignated par. (5) as (4).

2000—Subsec. (b). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(1)], substituted ''(H)(i), (L), or (V)'' for ''(H)(i) or (L)''.

Subsec. (c)(9)(A). Pub. L. 106–311, § 1(1), substituted ''(excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before October 1, 2003'' for ''(excluding an employer described in subparagraph (A) or (B) of section 1182(p)(1) of this title) filing (on or after December 1, 1998, and before October 1, 2001)''.

Subsec. (c)(9)(B). Pub. L. 106–311, § 1(2), substituted ''$1,000'' for ''$500''.

Subsec. (c)(10). Pub. L. 106–396 added par. (10).

Subsec. (d). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(1)], substituted ''1101(a)(15)(K)(i)'' for ''1101(a)(15)(K)''.

Subsec. (g)(1)(A)(iv) to (vii). Pub. L. 106–313, § 102(a), added cls. (iv) to (vi), redesignated former cl. (v) as (vii), and struck out former cl. (iv) which read as follows: ''107,500 in fiscal year 2001; and''.

Subsec. (g)(3). Pub. L. 106–313, § 108, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.''

Subsec. (g)(5) to (7). Pub. L. 106–313, § 103, added pars. (5) to (7).

Subsec. (h). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(1)], substituted ''(H)(i), (L), or (V)'' for ''(H)(i) or (L)''.

Subsec. (*l*). Pub. L. 106–386, § 107(e)(2)(A), redesignated subsec. (*l*), relating to nonimmigrant elementary and secondary school students, as (m).

Subsec. (m). Pub. L. 106–386, § 107(e)(2)(A), redesignated subsec. (*l*), relating to nonimmigrant elementary and secondary school students, as (m).

Pub. L. 106–313, § 105(a), added subsec. (m) relating to increased portability of H–1B status.

Subsec. (n). Pub. L. 106–386, § 107(e)(2)(B), added subsec. (n).

Subsec. (*o*). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(b)], added subsec. (*o*) relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title.

Pub. L. 106–386, § 1513(c), added subsec. (*o*) relating to requirements applicable to section 1101(a)(15)(U) visas.

Subsec. (p). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(b)], added subsec. (p).

1999—Subsec. (k)(2). Pub. L. 106–104 substituted ''7 years'' for ''5 years''.

1998—Subsec. (c)(9). Pub. L. 105–277, § 414(a), added par. (9).

Subsec. (g)(1)(A). Pub. L. 105–277, § 411(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''under section 1101(a)(15)(H)(i)(b) of this title may not exceed 65,000, or''.

1997—Subsec. (*l*)(1)(D). Pub. L. 105–65 inserted before period at end '', except that, in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary''.

1996—Subsec. (c)(2)(A). Pub. L. 104–208, § 308(f)(1)(G), substituted ''admission'' for ''entry''.

Subsec. (c)(5)(B). Pub. L. 104–208, § 308(f)(3)(B), substituted ''is admitted to'' for ''enters''.

Subsec. (d). Pub. L. 104–208, § 308(g)(5)(A)(i), (7)(A), substituted ''sections 1229a and 1231'' for ''sections 1252 and 1253''.

Pub. L. 104–208, § 308(f)(1)(H), substituted ''admission'' for ''entry''.

Pub. L. 104–208, § 308(e)(2)(B), substituted ''removed'' for ''deported''.

Subsec. (f)(1). Pub. L. 104–208, § 671(e)(4)(A), substituted ''section 40102(a)(2) of title 49'' for ''section 101(3) of the Federal Aviation Act of 1958''.

Subsec. (j). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k).

Subsec. (j)(1). Pub. L. 104–208, § 621, substituted ''200'' for ''100'' and ''50'' for ''25''.

Subsec. (k). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k). Former (k) redesignated (*l*).

Pub. L. 104–208, § 622(c), amended subsec. (k) generally, substituting provisions relating to requests by interested State and Federal agencies for waivers of the two-year foreign residence requirement under section 1182(e) of this title for former provisions relating to requests by interested State agencies for such waivers.

Subsec. (k)(4)(C). Pub. L. 104–208, § 308(e)(1)(D), amended subsec. (k)(4)(C), as redesignated by Pub. L. 104–208, § 671(a)(3)(A), by substituting ''removal'' for ''deportation''.

Subsec. (*l*). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (k) as (*l*).

Pub. L. 104–208, § 625(a)(1), added subsec. (*l*) relating to nonimmigrant elementary and secondary school students.

1994—Subsec. (j). Pub. L. 103–322 added subsec. (j) relating to numerical limitations on the number of aliens provided with nonimmigrant visas.

Subsec. (k). Pub. L. 103–416 added subsec. (k).

1993—Subsec. (e). Pub. L. 103–182, § 341(b), designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (j). Pub. L. 103–182, § 341(c), added subsec. (j).

1991—Subsec. (a)(2)(A). Pub. L. 102–232, § 303(a)(11), substituted ''described in section 1101(a)(15)(O)'' for ''under section 1101(a)(15)(O)''.

Pub. L. 102–232, § 205(d), inserted ''(or events)'' after ''event''.

Subsec. (a)(2)(B). Pub. L. 102–232, § 206(a), designated cl. (i) as subpar. (B) and struck out cl. (ii) which read as follows: ''An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 1101(a)(15)(P) of this title may not be readmitted as such a nonimmigrant unless the alien has remained outside the United States for at least 3 months after the date of the most recent admission. The Attorney General may waive the application of the previous sentence in the case of individual tours in which the application would work an undue hardship.''

Subsec. (c)(2)(A). Pub. L. 102–232, § 303(a)(10)(A), substituted ''individual petitions'' for ''individuals petitions''.

Subsec. (c)(2)(D). Pub. L. 102–232, § 303(a)(10)(B), substituted ''involves'' for ''involved''.

Subsec. (c)(3). Pub. L. 102–232, § 205(e), inserted at end ''The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.''

Subsec. (c)(3)(A). Pub. L. 102–232, § 204(1), substituted ''after consultation in accordance with paragraph (6)'' for ''after consultation with peer groups in the area of the alien's ability''.

Subsec. (c)(3)(B). Pub. L. 102–232, § 204(2), substituted ''after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability'' for ''after consultation with labor organizations with expertise in the skill area involved''.

Subsec. (c)(4)(A), (B). Pub. L. 102–232, § 203(b), added subpars. (A) and (B) and redesignated former subpars. (A) and (B) as (C) and (D), respectively.

Subsec. (c)(4)(C). Pub. L. 102–232, § 204(3), struck out ''clause (ii) of'' after ''under''.

Pub. L. 102–232, § 203(b), redesignated subpar. (A) as (C). Former subpar. (C) redesignated (E).

Subsec. (c)(4)(D). Pub. L. 102–232, § 204(4), substituted ''after consultation in accordance with paragraph (6)'' for ''after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved''.

Pub. L. 102–232, § 203(b), redesignated subpar. (B) as (D).

Subsec. (c)(4)(E). Pub. L. 102–232, § 206(c)(2), struck out before period at end '', in order to assure reciprocity in fact with foreign states''.

Pub. L. 102–232, § 203(b), redesignated subpar. (C) as (E).

Subsec. (c)(5). Pub. L. 102–232, § 207(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(5)(A). Pub. L. 102–232, § 303(a)(12), substituted ''1101(a)(15)(H)(ii)(b)'' for ''1101(H)(ii)(b)''.

Subsec. (c)(6), (7). Pub. L. 102–232, § 204(5), (6), added par. (6) and redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 102–232, § 207(c)(1), added par. (8).

Subsec. (g)(1). Pub. L. 102–232, § 202(a), inserted ''or'' at end of subpar. (A), substituted a period for '', or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''under section 1101(a)(15)(P)(i) or section 1101(a)(15)(P)(iii) of this title may not exceed 25,000.''

1990—Subsec. (a). Pub. L. 101–649, § 207(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–649, § 205(b)(1), inserted ''(other than a nonimmigrant described in subpara-

graph (H)(i) or (L) of section 1101(a)(15) of this title)'' after ''Every alien''.

Subsec. (c). Pub. L. 101–649, §§206(b), 207(b)(2)(B), designated existing provisions as par. (1), substituted reference to section 1101(a)(15)(H), (L), (O), or (P)(i) of this title for reference to section 1101(a)(15)(H) or (L) of this title, and added pars. (2) to (6).

Subsec. (f). Pub. L. 101–649, §202(a), added subsec. (f).

Subsecs. (g) to (i). Pub. L. 101–649, §205(a), (b)(2), (c)(2), added subsecs. (g) to (i).

1988—Subsec. (c). Pub. L. 100–525, §2(*l*)(1), amended Pub. L. 99–603, §301(b). See 1986 Amendment note below.

Subsec. (e). Pub. L. 100–449 added subsec. (e).

1986—Subsec. (a). Pub. L. 99–603, §313(b), inserted provision directing that no alien admitted without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

Subsec. (c). Pub. L. 99–603, §301(b), as amended by Pub. L. 100–525, §2(*l*)(1), inserted provisions relating to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title.

Subsec. (d). Pub. L. 99–639, §3(a), substituted ''have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry,'' for ''have a bona fide intention to marry'', and inserted '', except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person''.

Pub. L. 99–639, §3(c), struck out last sentence which read: ''In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.''

1984—Subsec. (a). Pub. L. 98–454 inserted ''No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam.''

1970—Subsec. (c). Pub. L. 91–225, §3(a), inserted reference to subpar. (L) of section 1101(a)(15) of this title.

Subsec. (d). Pub. L. 91–225, §3(b), added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1074(c), Oct. 17, 2006, 120 Stat. 2403, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall take effect on October 1, 2006. If this section is enacted after October 1, 2006, the amendments made by this section shall take effect as if enacted on such date.''

Pub. L. 109–162, title VIII, §832(a)(3), Jan. 5, 2006, 119 Stat. 3068, provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Jan. 5, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title IV, §402(b), May 11, 2005, 119 Stat. 318, as amended by Pub. L. 109–364, div. A, title X, §1074(b), Oct. 17, 2006, 120 Stat. 2403, provided that:

''(1) IN GENERAL.—The amendment in subsection (a) [amending this section] shall take effect as if enacted on October 1, 2004.

''(2) IMPLEMENTATION.—Not later than 14 days after the date of the enactment of this Act [May 11, 2005], the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(b)], in a manner consistent with this section [amending this section] and the amendments made by this section. Notwithstanding section 214(g)(9)(B) of such Act [8 U.S.C. 1184(g)(9)(B)], as added by subsection (a), the Secretary of Homeland Security shall allocate additional numbers for fiscal year 2005 based on statistical estimates and projections derived from Department of State data.''

Pub. L. 109–13, div. B, title IV, §403(c), May 11, 2005, 119 Stat. 319, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1356 of this title] shall take effect 14 days after the date of the enactment of this Act [May 11, 2005] and shall apply to filings for a fiscal year after fiscal year 2005.''

Pub. L. 109–13, div. B, title IV, §404(b), May 11, 2005, 119 Stat. 320, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. J, title IV, §412(b), Dec. 8, 2004, 118 Stat. 3352, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions filed on or after the effective date of this subtitle [subtitle A, effective 180 days after Dec. 8, 2004, see below], whether for initial, extended, or amended classification.''

Pub. L. 108–447, div. J, title IV, §413(b), Dec. 8, 2004, 118 Stat. 3352, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to petitions for initial classification filed on or after the effective date of this subtitle [subtitle A, effective 180 days after Dec. 8, 2004, see below].''

Pub. L. 108–447, div. J, title IV, §417, Dec. 8, 2004, 118 Stat. 3353, provided that: ''This subtitle [subtitle A (§§411–417) of title IV of div. J of Pub. L. 108–447, enacting section 1380 of this title, amending this section, and enacting provisions set out as notes under this section and section 1101 of this title] and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act [Dec. 8, 2004].''

Amendment by sections 422(b) and 426(a) of Pub. L. 108–447 effective Dec. 8, 2004, and amendment by section 425(a) of Pub. L. 108–447 effective 90 days after Dec. 8, 2004, see section 430 of Pub. L. 108–447, set out as a note under section 1182 of this title.

Pub. L. 108–447, div. J, title IV, §426(c), Dec. 8, 2004, 118 Stat. 3358, provided that: ''The amendments made by this section [amending this section and section 1356 of this title] shall take effect on the date of enactment of this Act [Dec. 8, 2004], and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act [8 U.S.C. 1184(c)], and applications for nonimmigrant visas under section 222 of such Act [8 U.S.C. 1202], filed on or after the date that is 90 days after the date of the enactment of this Act.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–78, set out in a note under section 3805 of Title 19, Customs Duties.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out as a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective as if enacted May 31, 2002, see section 11018(d) of Pub. L. 107–273, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by section 1(a)(2) [title XI, §1102(b), (d)(1)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification pe-

tition filed under section 1154 of this title on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(e)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Amendment by section 1(a)(2) [title XI, §1103(b), (c)(1)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, §1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Pub. L. 106–313, title I, §105(b), Oct. 17, 2000, 114 Stat. 1253, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions filed before, on, or after the date of enactment of this Act [Oct. 17, 2000].''

Pub. L. 106–311, §2, Oct. 17, 2000, 114 Stat. 1247, provided that: ''The amendment made by section 1(2) [amending this section] shall apply only to petitions that are filed on or after the date that is 2 months after the date of the enactment of this Act [Oct. 17, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IV, §411(b), Oct. 21, 1998, 112 Stat. 2681–642, provided that: ''The amendment made by subsection (a) [amending this section] applies beginning with fiscal year 1999.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(1)(D), (2)(B), (f)(1)(G), (H), (3)(B), (g)(5)(A)(i), (7)(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 625(a)(1) of Pub. L. 104–208 applicable to individuals who obtain status of nonimmigrant under section 1101(a)(15)(F) of this title after end of 60-day period beginning Sept. 30, 1996, including aliens whose status as such a nonimmigrant is extended after end of such period, see section 625(c) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 671(a)(3)(A) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 applicable to aliens admitted to United States under section 1101(a)(15)(J) of this title, or acquiring such status after admission to United States, before, on, or after Oct. 25, 1994, and before June 1, 2008, see section 220(c) of Pub. L. 103–416, as amended, set out as an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 342 of Pub. L. 103–182, set out as a note under section 3401 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 202(a), 203(b), 204, 205(d), (e), 206(a), (c)(2), 207(a), (c)(1) of Pub. L. 102–232 effective Apr. 1, 1992, see section 208 of Pub. L. 102–232, set out as a note under section 1101 of this title.

Amendment by section 303(a)(10)–(12) 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 202(a) of Pub. L. 101–649 effective 60 days after Nov. 29, 1990, see section 202(c) of Pub. L. 101–649, set out as a note under section 1182 of this title.

Amendment by sections 205(a), (b), (c)(2), 206(b), and 207(b) of Pub. L. 101–649 effective Oct. 1, 1991, see section 231 of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

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 an Effective Date of 1988 Amendment note under section 1101 of this title.

Amendment by Pub. L. 100–449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 3(d)(1), (3) of Pub. L. 99–639 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply to petitions approved on or after the date of the enactment of this Act [Nov. 10, 1986].

''(3) The amendment made by subsection (c) [amending this section] shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(K)] on or after the date of the enactment of this Act.''

Amendment by section 301(b) of Pub. L. 99–603 applicable to petitions and applications filed under sections 1184(c) and 1188 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub. L. 99–603, as amended, set out as an Effective Date note under section 1188 of this title.

TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22, Foreign Relations and Intercourse.

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.

LIMITATION ON USE OF CERTAIN INFORMATION

Pub. L. 109–162, title VIII, §832(b), Jan. 5, 2006, 119 Stat. 3068, provided that: ''The fact that an alien described in clause (i) or (ii) of section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is aware of any information disclosed under the amendments made by this section [amending this section] or under section 833 [enacting section 1375a of this title and repealing section 1375 of this title] shall not be used to deny the alien eligibility for relief under any other provision of law.''

EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT

Pub. L. 109–13, div. B, title IV, §407, May 11, 2005, 119 Stat. 321, provided that: ''The requirements of chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act') or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement sections 402, 403, and 405 [amending this section and section 1356 of this title and enacting provisions set out as notes under this section] or the amendments made by such sections to the extent the Secretary Homeland of Security, the Secretary of Labor, or the Secretary of State determine that com-

pliance with any such requirement would impede the expeditious implementation of such sections or the amendments made by such sections.''

L VISA INTERAGENCY TASK FORCE AND INSPECTOR GENERAL REPORT

Pub. L. 108–447, div. J, title IV, §§415, 416, Dec. 8, 2004, 118 Stat. 3352, provided that:

''SEC. 415. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

''Not later than 6 months after the date of enactment of this Act [Dec. 8, 2004], the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

''SEC. 416. ESTABLISHMENT OF TASK FORCE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act [Dec. 8, 2004], there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

''(b) REPORT.—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6 [probably means section 415 of div. J. of Pub. L. 108–447], the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General's report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General's report or by the Task Force's own deliberations regarding the policies and purposes of the visa program relative to national goals and transnational commerce.''

STATISTICAL INFORMATION ON COUNTRY OF ORIGIN, OCCUPATION, EDUCATIONAL LEVEL AND COMPENSATION

Pub. L. 108–447, div. J, title IV, §425(b), Dec. 8, 2004, 118 Stat. 3356, provided that: ''Beginning on the date of enactment of this Act [Dec. 8, 2004], the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277; 112 Stat. 2681–655) [set out below].''

ADDITIONAL VISAS FOR FISCAL YEARS 1999 AND 2000

Pub. L. 106–313, title I, §102(b), Oct. 17, 2000, 114 Stat. 1251, provided that:

''(1) IN GENERAL.—(A) Notwithstanding section 214(g)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)(ii)), the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] in fiscal year 1999 is increased by a number equal to the number of aliens who are issued such a visa or provided such status during the period beginning on the date on which the limitation in such section 214(g)(1)(A)(ii) is reached and ending on September 30, 1999.

''(B) In the case of any alien on behalf of whom a petition for status under section 101(a)(15)(H)(i)(b) is filed before September 1, 2000, and is subsequently approved, that alien shall be counted toward the numerical ceiling for fiscal year 2000 notwithstanding the date of the approval of the petition. Notwithstanding section 214(g)(1)(A)(iii) of the Immigration and Nationality Act, the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act in fiscal year 2000 is increased by a number equal to the number of aliens who may be issued visas or otherwise provided nonimmigrant status who filed a petition during the period beginning on the date on which the limitation in such section 214(g)(1)(A)(iii) is reached and ending on August 31, 2000.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if included in the enactment of section 411 of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) [see Effective Date of 1998 Amendment note above].''

ONE-TIME PROTECTION UNDER PER COUNTRY CEILING

Pub. L. 106–313, title I, §104(c), Oct. 17, 2000, 114 Stat. 1253, provided that: ''Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)), any alien who—

''(1) is the beneficiary of a petition filed under section 204(a) of that Act [8 U.S.C. 1154(a)] for a preference status under paragraph (1), (2), or (3) of section 203(b) of that Act [8 U.S.C. 1153(b)]; and

''(2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.''

SPECIAL PROVISIONS IN CASES OF LENGTHY ADJUDICATIONS

Pub. L. 106–313, title I, §106(a), (b), Oct. 17, 2000, 114 Stat. 1253, 1254, as amended by Pub. L. 107–273, div. C, title I, §11030A, Nov. 2, 2002, 116 Stat. 1836, provided that:

''(a) EXEMPTION FROM LIMITATION.—The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

''(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. 1153(b)).

''(2) A petition described in section 204(b) of such Act (3 U.S.C. 1154(b)) [8 U.S.C. 1154(b)] to accord the alien a status under section 203(b) of such Act.

''(b) EXTENSION OF H–1B WORKER STATUS.—The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

''(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

''(2) to deny the petition described in subsection (a)(2); or

''(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.''

EXCLUSION OF CERTAIN ''J'' NONIMMIGRANTS FROM NUMERICAL LIMITATIONS APPLICABLE TO ''H–1B'' NONIMMMIGRANTS

Pub. L. 106–313, title I, §114, Oct. 17, 2000, 114 Stat. 1262, provided that: ''The numerical limitations contained in section 102 of this title [amending this section and enacting provisions set out as a note above] shall not apply to any nonimmigrant alien granted a waiver that is subject to the limitation contained in paragraph (1)(B) of the first section 214(*l*) of the Immigration and Nationality Act [8 U.S.C. 1184(*l*)] (relating to restrictions on waivers).''

IMPROVING COUNT OF H–1B AND H–2B NONIMMIGRANTS

Pub. L. 105–277, div. C, title IV, §416, Oct. 21, 1998, 112 Stat. 2681–655, as amended by Pub. L. 109–13, div. B, title IV, §406, May 11, 2005, 119 Stat. 320, provided that:

''(a) ENSURING ACCURATE COUNT.—The Secretary of Homeland Security shall take such steps as are necessary to maintain an accurate count of the number of aliens subject to the numerical limitations of section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

''(b) REVISION OF PETITION FORMS.—The Secretary of Homeland Security shall take such steps as are necessary to revise the forms used for petitions for visas or nonimmigrant status under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) so as to ensure that the forms provide the Secretary of Homeland Security with sufficient information to permit the Secretary of Homeland Security accurately to count the number of aliens subject to the numerical limitations of section 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

''(c) PROVISION OF INFORMATION.—

''(1) QUARTERLY NOTIFICATION.—Beginning not later than 60 days after the first day of fiscal year 1999, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committees on the Judiciary of the United States House of Representatives and the Senate of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] during the preceding 3-month period.

''(2) ANNUAL SUBMISSION.—Beginning with fiscal year 2000, the Secretary of Homeland Security shall submit on an annual basis, to the Committees on the Judiciary of the United States House of Representatives and the Senate, information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] during the previous fiscal year. With respect to the first submission under this paragraph, the information shall relate solely to aliens provided nonimmigrant status after the date that is 60 days after the date on which final regulations are issued to carry out section 412(a) [amending section 1182 of this title].

''(3) SPECIFICATION OF NUMBER OF PETITIONS FILED BY CERTAIN EMPLOYERS.—Each notification under paragraph (1), and each submission under paragraph (2), shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act [8 U.S.C. 1182(p)(1)] (as added by section 415 of this title).

''(d) PROVISION OF INFORMATION.—

''(1) SEMIANNUAL NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who during the preceding 1-year period—

''(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

''(B) had such a visa or such status be revoked or otherwise terminated.

''(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

''(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

''(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

''(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

''(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.''

REPORTING ON STUDIES SHOWING ECONOMIC IMPACT OF H–1B NONIMMIGRANT INCREASE

Pub. L. 105–277, div. C, title IV, §418(b), Oct. 21, 1998, 112 Stat. 2681–657, provided that: ''The Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chair of the Council of Economic Advisers, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and any other member of the Cabinet, shall promptly report to the Congress the results of any reliable study that suggests, based on legitimate economic analysis, that the increase effected by section 411(a) of this title [amending this section] in the number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] has had an impact on any national economic indicator, such as the level of inflation or unemployment, that warrants action by the Congress.''

DEADLINE FOR FIRST REPORT WITH RESPECT TO PETITIONS

Section 207(c)(2) of Pub. L. 102–232 provided that: ''The first report under section 214(c)(8) of the Immigration and Nationality Act [8 U.S.C. 1184(c)(8)] shall be provided not later than April 1, 1993.''

DELAY UNTIL APRIL 1, 1992, IN APPLICATION OF SUBSECTION (g)(1)(C) OF THIS SECTION

See section 3 of Pub. L. 102–110, set out as a Delay Until April 1, 1992, in Implementation of Provisions Relating to Nonimmigrant Artists, Athletes, Entertainers, and Fashion Models note under section 1101 of this title.

WORK AUTHORIZATION DURING PENDING LABOR DISPUTES

Section 207(c) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §303(a)(13), Dec. 12, 1991, 105 Stat. 1748, provided that:

''(1) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a)]) and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act [Nov. 29, 1990] the alien—

''(A) continues to be authorized to be employed in the occupation for that employer, and

''(B) is authorized to be employed in any occupation for any other employer so long as such strike or lockout continues with respect to that occupation and employer.

''(2) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act) and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act the alien—

''(A) is not authorized to be employed in the occupation for that employer, and

''(B) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

''(3) With respect to a nonimmigrant described in paragraph (1) or (2) who does not perform unauthorized employment, any limit on the period of authorized stay shall be extended by the period of the strike or lockout, except that any such extension may not continue beyond the maximum authorized period of stay.

''(4) The provisions of this subsection shall take effect on the date of the enactment of this Act.''

OFF-CAMPUS WORK AUTHORIZATION FOR STUDENTS (F NONIMMIGRANTS)

Section 221 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 303(b)(1), (2), Dec. 12, 1991, 105 Stat. 1748; Pub. L. 103–416, title II, § 215(a), Oct. 25, 1994, 108 Stat. 4315, provided that:

''(a) 5-YEAR PROVISION.—With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)] during the 5-year period beginning October 1, 1991, the Attorney General shall grant such an alien work authorization to be employed off-campus if—

''(1) the alien has completed 1 academic year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

''(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment, and

''(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection.

''(b) REPORT TO CONGRESS.—Not later than April 1, 1996, the Commissioner of Immigration and Naturalization and the Secretary of Labor shall prepare and submit to the Congress a report on—

''(1) whether the program of work authorization under subsection (a) should be extended, and

''(2) the impact of such program on prevailing wages of workers.''

LIMITATION ON ADMISSION OF ALIENS SEEKING EMPLOYMENT IN THE VIRGIN ISLANDS

Notwithstanding any other provision of law, the Attorney General not to be authorized, on or after Sept. 30, 1982, to approve any petition filed under subsec. (c) of this section in the case of importing any alien as a nonimmigrant under section 1101(a)(15)(H)(ii) of this title for employment in the Virgin Islands of the United States other than as an entertainer or as an athlete and for a period not exceeding 45 days, see section 3 of Pub. L. 97–271, set out as a note under section 1255 of this title.

IMPORTATION OF SHEEPHERDERS; TERMINATION OF QUOTA DEDUCTIONS

Quota deductions authorized by acts June 30, 1950, ch. 423, 64 Stat. 306; Apr. 9, 1952, ch. 171, 66 Stat. 50, terminated effective July 1, 1957.

CANCELLATION OF CERTAIN NONIMMIGRANT DEPARTURE BONDS

Pub. L. 85–531, July 18, 1958, 72 Stat. 375, authorized the Attorney General, upon application made not later than July 18, 1963, to cancel any departure bond posted pursuant to the Immigration Act of 1924, as amended, or the Immigration and Nationality Act [this chapter], on behalf of any refugee who entered the United States as a nonimmigrant after May 6, 1945, and prior to July 1, 1953, and who had his immigration status adjusted to that of an alien admitted for permanent residence pursuant to any public or private law.

§ 1184a. Philippine Traders as nonimmigrants

Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (66 Stat. 163), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of said Act if entering solely for the purposes specified in subsection (i) or (ii) of said section.

(June 18, 1954, ch. 323, 68 Stat. 264.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

§ 1185. Travel control of citizens and aliens

(a) Restrictions and prohibitions

Unless otherwise ordered by the President, it shall be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

(b) Citizens

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

(c) Definitions

The term ''United States'' as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term ''person'' as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(d) Nonadmission of certain aliens

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

(e) Revocation of proclamation as affecting penalties

The revocation of any rule, regulation, or order issued in pursuance of this section shall not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such rule, regulation, or order.

(f) Permits to enter

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section.

(June 27, 1952, ch. 477, title II, ch. 2, §215, 66 Stat. 190; Pub. L. 95–426, title VII, §707(a)–(d), Oct. 7, 1978, 92 Stat. 992, 993; Pub. L. 103–416, title II, §204(a), Oct. 25, 1994, 108 Stat 4311.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416 inserted ''United States'' after ''valid''.

1978—Subsec. (a). Pub. L. 95–426, §707(a), substituted provision that the enumerated acts would, unless otherwise ordered by the President, be deemed unlawful for provisions declaring it unlawful when the United States is at war or during a proclaimed national emergency, or, as to aliens, when there exists a state of war between two or more states and the President finds that the interests of the United States require restrictions to be imposed upon departure of persons from and their entry into the United States.

Subsec. (b). Pub. L. 95–426, §707(b), substituted provisions prohibiting departure or entry except as otherwise provided by the President and subject to such limitations and exceptions as he may authorize or prescribe, for provisions prohibiting such departure or entry after proclamation of a national emergency has been made, published and in force.

Subsec. (c). Pub. L. 95–426, §707(d), redesignated subsec. (d) as (c). Former subsec. (c), which provided for penalties for violation of this section, was struck out.

Subsec. (d). Pub. L. 95–426, §707(d), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95–426, §707(c), (d), redesignated subsec. (f) as (e) and struck out ''proclamation,'' before ''rule'' in two places. Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 95–426, §707(d), redesignated subsec. (g) as (f). Former (f) redesignated (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 204(b) of Pub. L. 103–416 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to departures and entries (and attempts thereof) occurring on or after the date of enactment of this Act [Oct. 25, 1994].''

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 AUTHORITY UNDER SECTIONS 1182(f) AND 1185(a)(1) OF THIS TITLE

Authority of President under subsec. (a)(1) of this section to maintain custody and conduct screening of any undocumented person seeking to enter the United States who is encountered in a vessel interdicted on the high seas through Dec. 31, 2000, delegated to Attorney General by Memorandum of President of the United States, Sept. 24, 1999, 64 F.R. 55809, set out as a note under section 1182 of this title.

WESTERN HEMISPHERE TRAVEL INITIATIVE

Pub. L. 110–53, title VII, §724, Aug. 3, 2007, 121 Stat. 350, provided that: ''Before the Secretary of Homeland Security publishes a final rule in the Federal Register implementing section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note) [set out below]—

''(1) the Secretary of Homeland Security shall complete a cost-benefit analysis of the Western Hemi-

sphere Travel Initiative, authorized under such section 7209; and

''(2) the Secretary of State shall develop proposals for reducing the execution fee charged for the passport card, proposed at 71 Fed. Reg. 60928–32 (October 17, 2006), including the use of mobile application teams, during implementation of the land and sea phase of the Western Hemisphere Travel Initiative, in order to encourage United States citizens to apply for the passport card.''

Pub. L. 108–458, title VII, § 7209, Dec. 17, 2004, 118 Stat. 3823, as amended by Pub. L. 109–295, title V, § 546, Oct. 4, 2006, 120 Stat. 1386; Pub. L. 110–53, title VII, § 723, Aug. 3, 2007, 121 Stat. 349; Pub. L. 110–161, div. E, title V, § 545, Dec. 26, 2007, 121 Stat. 2080, provided that:

''(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

''(1) Existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification.

''(2) The planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities.

''(3) Additional safeguards are needed to ensure that terrorists cannot enter the United States.

''(b) PASSPORTS.—

''(1) DEVELOPMENT OF PLAN AND IMPLEMENTATION.—

''(A) The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). Such plan may not be implemented earlier than the date that is the later of 3 months after the Secretary of State and the Secretary of Homeland Security make the certification required in subparagraph (B) or June 1, 2009. The plan shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k) [8 U.S.C. 1365b(k)]).

''(B) The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the House of Representatives that the following criteria have been met prior to implementation of section 7209(b)(1)(A)—

''(i) the National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: *Provided*, That the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: *Provided further*, That to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

''(ii) the technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

''(iii) an agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

''(iv) an alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

''(v) the necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

''(vi) the passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda;

''(vii) a single implementation date for sea and land borders has been established; and

''(viii) the signing of a memorandum of agreement to initiate a pilot program with not less than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, not valid for certification of citizenship for any purpose other than admission into the United States from Canada or Mexico, and issued by such State to an individual, may permit the individual to use the driver's license to meet the documentation requirements under subparagraph (A) for entry into the United States from Canada or Mexico at land and sea ports of entry.

''(C) REPORT.—Not later than 180 days after the initiation of the pilot program described in subparagraph (B)(viii), the Secretary of Homeland Security and the Secretary of State shall submit to the appropriate congressional committees a report which includes—

''(i) an analysis of the impact of the pilot program on national security;

''(ii) recommendations on how to expand the pilot program to other States;

''(iii) any appropriate statutory changes to facilitate the expansion of the pilot program to additional States and to citizens of Canada;

''(iv) a plan to screen individuals participating in the pilot program against United States terrorist watch lists; and

''(v) a recommendation for the type of machine-readable technology that should be used in enhanced driver's licenses, based on individual privacy considerations and the costs and feasibility of incorporating any new technology into existing driver's licenses.

''(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)], to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

''(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

''(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)] to waive documentary requirements for travel into the United States; and

''(2) the President may not exercise discretion under section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except—

''(A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship;

''(B) in the case of an unforeseen emergency in individual cases; or

''(C) in the case of humanitarian or national interest reasons in individual cases.

''(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act [8 U.S.C. 1182(d)(4)(C)] until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.''

[Amendment by Pub. L. 110–161, § 545, to section 7209 of Pub. L. 108–458, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

EX. ORD. NO. 12172. DELEGATION OF AUTHORITY OF PRESIDENT TO SECRETARY OF STATE AND ATTORNEY GENERAL RESPECTING ENTRY OF IRANIAN ALIENS INTO THE UNITED STATES

Ex. Ord. No. 12172, Nov. 26, 1979, 44 F.R. 67947, as amended by Ex. Ord. No. 12206, Apr. 7, 1980, 45 F.R. 24101, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1–101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

Section 1–102. Effective Date. This order is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 13323. ASSIGNMENT OF FUNCTIONS RELATING TO ARRIVALS IN AND DEPARTURES FROM THE UNITED STATES

Ex. Ord. No. 13323, Dec. 30, 2003, 69 F.R. 241, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and section 301 of title 3, United States Code, and to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

SECTION 1. *Functions of the Secretary of Homeland Security*. The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

SEC. 2. *Functions of the Secretary of State*. The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

SEC. 3. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 1186. Transferred

CODIFICATION

Section, act June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 301(c), 100 Stat. 3411, which related to admission of temporary H–2A workers, was renumbered § 218 by Pub. L. 100–525, § 2(*l*)(2), Oct. 24, 1988, 102 Stat. 2612, and transferred to section 1188 of this title.

§ 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (g)(1) of this section) and an alien son or daughter (as defined in subsection (g)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsections[1] (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(b) Termination of status if finding that qualifying marriage improper

(1) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

(i) was entered into for the purpose of procuring an alien's admission as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

[1] So in original. Probably should be ''subsection''.

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying marriage.

(4) Hardship waiver

The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident par-

ent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. 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. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)[2] of section 1184 of this title with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a) of this section, and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions

In this section:

(1) The term ''alien spouse'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term ''alien son or daughter'' means an alien who obtains the status of an alien

[2] See References in Text note below.

lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term ''qualifying marriage'' means the marriage described to in paragraph (1).

(4) The term ''petitioning spouse'' means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Pub. L. 99–639, § 2(a), Nov. 10, 1986, 100 Stat. 3537; amended Pub. L. 100–525, § 7(a), Oct. 24, 1988, 102 Stat. 2616; Pub. L. 101–649, title VII, § 701(a), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102–232, title III, § 302(e)(8)(B), Dec. 12, 1991, 105 Stat. 1746; Pub. L. 103–322, title IV, § 40702(a), Sept. 13, 1994, 108 Stat. 1955; Pub. L. 104–208, div. C, title III, § 308(d)(4)(E), (e)(7), (f)(1)(I), (J), Sept. 30, 1996, 110 Stat. 3009–618, 3009–620, 3009–621; Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–145.)

REFERENCES IN TEXT

Subsection (p) of section 1184 of this title, referred to in subsec. (d)(1)(A)(ii), was redesignated subsec. (r) of section 1184 by Pub. L. 108–193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS

2000—Subsecs. (b)(1)(B), (d)(1)(A)(ii). Pub. L. 106–553 substituted ''section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title'' for ''section 1154(a) or 1184(d) of this title''.

1996—Subsec. (b)(1)(A)(i). Pub. L. 104–208, § 308(f)(1)(I), substituted ''admission'' for ''entry''.

Subsec. (b)(2). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(2)(B). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and text.

Subsec. (c)(3)(D). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(4)(A). Pub. L. 104–208, § 308(e)(7), substituted ''removed'' for ''deported''.

Subsec. (d)(1)(A)(i)(III). Pub. L. 104–208, § 308(f)(1)(J), substituted ''admission'' for ''entry''.

Subsec. (d)(2)(C). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' wherever appearing in heading and text.

Subsec. (f). Pub. L. 104–208, § 308(d)(4)(E), substituted ''inadmissibility'' for ''exclusion''.

1994—Subsec. (c)(4). Pub. L. 103–322 inserted after second sentence ''In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. 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.''

1991—Subsec. (g)(1). Pub. L. 102–232 substituted ''section 1153(d)'' for ''section 1153(a)(8)'' in closing provisions.

1990—Subsec. (c)(4). Pub. L. 101–649 struck out ''or'' at end of subpar. (A), struck out ''by the alien spouse for good cause'' after ''death of the spouse)'' and substituted '', or'' for period at end of subpar. (B), added subpar. (C), and inserted at end ''The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.''

1988—Pub. L. 100–525, § 7(a)(1), made technical amendment to directory language of Pub. L. 99–639, § 2(a), which enacted this section.

Subsec. (c)(3)(A). Pub. L. 100–525, § 7(a)(2), substituted ''90 days'' for ''90-days''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, § 1103(d)] of Pub. L. 106–553, set out as a note under section 1101 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 1994 AMENDMENT

Section 40702(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994] and shall apply to applications made before, on, or after such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 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.

§ 1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under

paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsection (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) Termination of status if finding that qualifying entrepreneurship improper

(1) In general

In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or

(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 1153(b)(5) of this title,

then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien entrepreneur, alien spouse, or alien child to be removed—

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section),

the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 1186a of this title) as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the such filing[1] or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

[1] So in original.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

(D) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that the alien—

(A)(i) invested, or is actively in the process of investing, the requisite capital; and

(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; and

(B) is otherwise conforming to the requirements of section 1153(b)(5) of this title.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Definitions

In this section:

(1) The term ''alien entrepreneur'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 1153(b)(5) of this title.

(2) The term ''alien spouse'' and the term ''alien child'' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(3) The term ''commercial enterprise'' includes a limited partnership.

(June 27, 1952, ch. 477, title II, ch. 2, § 216A, as added Pub. L. 101–649, title I, § 121(b)(1), Nov. 29, 1990, 104 Stat. 4990; amended Pub. L. 102–232, title III, § 302(b)(3), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 104–208, div. C, title III, § 308(e)(8), Sept. 30, 1996, 110 Stat. 3009–620; Pub. L. 107–273, div. C, title I, § 11036(b), Nov. 2, 2002, 116 Stat. 1847.)

AMENDMENTS

2002—Subsec. (b)(1)(A). Pub. L. 107–273, § 11036(b)(1)(A), substituted ''investment in'' for ''establishment of''.

Subsec. (b)(1)(B). Pub. L. 107–273, § 11036(b)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) a commercial enterprise was not established by the alien,

''(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

''(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien's residence in the United States, or''.

Subsec. (d)(1). Pub. L. 107–273, § 11036(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that—

''(A) a commercial enterprise was established by the alien;

''(B) the alien invested or was actively in the process of investing the requisite capital; and

''(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien's residence in the United States.''

Subsec. (f)(3). Pub. L. 107–273, § 11036(b)(3), added par. (3).

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(2)(B). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and text.

Subsec. (c)(3)(D). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (d)(2)(C). Pub. L. 104–208 substituted ''removal'' for ''deportation'' wherever appearing in heading and text.

1991—Subsec. (c)(2)(A). Pub. L. 102–232, § 302(b)(3)(A), in closing provisions inserted parenthetical provision relating to alien's spouse and children.

Subsecs. (c)(3)(B), (d)(2)(A). Pub. L. 102–232, § 302(b)(3)(B), struck out ''obtaining the status of'' before ''lawful admission''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002 and applicable to aliens having certain petitions pending under this section or section 1154 of this title on or after Nov. 2, 2002, see section 11036(c) of Pub. L. 107–273, set out as a note under section 1153 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 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

Section effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as an Effective Date of 1990 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.

IMMIGRATION BENEFITS

Pub. L. 107–273, div. C, title I, §§ 11031–11034, Nov. 2, 2002, 116 Stat. 1837–1846, provided that:

''SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).

''(b) ELIGIBLE ALIENS DESCRIBED.—

''(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—

''(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and

''(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act [Nov. 2, 2002], a petition requesting the removal of such conditional basis.

''(2) REOPENING PETITIONS PREVIOUSLY DENIED.—

''(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).

''(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—

''(i) the alien is inadmissible or deportable on any ground; or

''(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.

''(C) DEPORTATION OR REMOVAL PROCEEDINGS.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

''(c) DETERMINATIONS ON PETITIONS.—

''(1) INITIAL DETERMINATION.—

''(A) IN GENERAL.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002], whether—

''(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);

''(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs 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 eligible alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and

''(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(B) INVESTMENT UNDER PILOT IMMIGRATION PROGRAM.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act [Nov. 2, 2002], shall be deemed to satisfy the requirements of such subparagraph.

''(C) EXCEPTION FOR TROUBLED BUSINESSES.—In the case of an eligible alien who has made a capital in-

vestment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.

''(D) DATES.—The dates described in this subparagraph are the following:

''(i) The date on which the petition described in subsection (b)(1)(C) is filed.

''(ii) 6 months after the date described in clause (i).

''(iii) The date on which the determination under subparagraph (A) or (C) is made.

''(E) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(F) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(ii) CONTINUATION OF CONDITIONAL BASIS IF CERTAIN ADVERSE DETERMINATIONS.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.

''(iii) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(i), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(iv) ADMINISTRATIVE AND JUDICIAL REVIEW.—An alien may seek administrative review of an adverse determination made under subparagraph (A) by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 242(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(2) SECOND DETERMINATION.—

''(A) AUTHORIZATION TO CONSIDER INVESTMENTS IN OTHER COMMERCIAL ENTERPRISES.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (1)(F)(ii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).

''(B) PETITION.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).

''(C) PERIOD FOR FILING PETITION.—

''(i) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).

''(D) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION.—

''(i) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated

under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).

''(E) DETERMINATIONS AFTER PETITION.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—

''(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;

''(ii) all such enterprises, considered together, created full-time jobs 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 eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);

''(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii); and

''(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause; and

''(iii) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and

''(II) if the Attorney General determined under paragraph (1)(A)(iii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.

''(F) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(G) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) TERMINATION IF ADVERSE DETERMINATION.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(d) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (c) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General.

''(e) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act [Nov. 2, 2002] by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.

''(f) DEFINITION OF FULL-TIME.—For purposes of this section, the term 'full-time' means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

''SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002].

''(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if the alien—

''(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(2) pursuant to such approval, timely filed before the date of the enactment of this Act [Nov. 2, 2002] an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

''(3) is not inadmissible or deportable on any ground.

''(c) TREATMENT OF CERTAIN APPLICATIONS.—

''(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was

based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

''(2) APPLICATIONS NO LONGER PENDING.—

''(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act [Nov. 2, 2002], the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as reopened, if such lack of pendency is due to a determination that the alien—

''(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or

''(ii) departed the United States without advance parole.

''(B) APPLICANTS ABROAD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.

''(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of an application under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.

''(e) REMOVAL OF CONDITIONAL BASIS.—

''(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien's spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in the United States in which the alien has made a capital investment at any time.

''(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—

''(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;

''(B) subject to subparagraphs (B) and (C) of section 11031(c)(1), all such enterprises, considered together, created full-time jobs 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 alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on either of the dates described in paragraph (3); and

''(C) considering the alien's investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(3) DATES.—The dates described in this paragraph are the following:

''(A) The date on which the application described in subsection (b)(2) was filed.

''(B) The date on which the determination under paragraph (2) is made.

''(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.

''SEC. 11033. REGULATIONS.

''The Immigration and Naturalization Service shall promulgate regulations to implement this chapter [chapter 1 (§§ 11031–11034) of subtitle B of title I of div. C of Pub. L. 107–273, enacting this note] not later than 120 days after the date of enactment of this Act [Nov. 2, 2002]. Until such regulations are promulgated, the Attorney General shall not deny a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.

''SEC. 11034. DEFINITIONS.

''Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).''

§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the ''program'') under which the requirement of paragraph (7)(B)(i)(II) of section 1182(a) of this title may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the program as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of program country

The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c) of this section.

(3) Machine readable passport

(A) In general

Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) Limited waiver authority

For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c) of this section), if the Secretary of State finds that the program country—

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) Executes immigration forms

The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(5) Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations[1] which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section. The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) No previous violation

If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) Automated system check

The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(10) Electronic transmission of identification information

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(11) Eligibility determination under the electronic travel authorization system

Beginning on the date on which the electronic travel authorization system developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

(b) Waiver of rights

An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) Designation of program countries

(1) In general

The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) Qualifications

Except as provided in subsection (f) of this section, a country may not be designated as a program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate

Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

[1] So in original. Probably should be followed by a comma.

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) Machine readable passport program

(i) In general

Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) Deadline for compliance for certain countries

In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) Law enforcement and security interests

The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(D) Reporting lost and stolen passports

The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.

(E) Repatriation of aliens

The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(F) Passenger information exchange

The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

(3) Continuing and subsequent qualifications

For each fiscal year after the initial period—

(A) Continuing qualification

In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) New countries

In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of

that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period

For purposes of paragraphs (2) and (3), the term ''initial period'' means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) Written reports on continuing qualification; designation terminations

(A) Periodic evaluations

(i) In general

The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d) of this section;

(III) shall submit a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I); and

(IV) shall submit to Congress a report regarding the implementation of the electronic travel authorization system under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8).

(ii) Effective date

A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

(iii) Redesignation

In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) Emergency termination

(i) In general

In the case of a program country in which an emergency occurs that the Secretary of Homeland Security, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

(ii) Definition

For purposes of clause (i), the term ''emergency'' means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country's territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

(iii) Redesignation

The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(iv) Program suspension authority

The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

(III) shall restore the suspended country's participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

(C) Treatment of nationals after termination

For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) of this section until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) of this section shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) Computation of visa refusal rates

For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) Visa waiver information

(A) In general

In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) Reporting requirement

On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this chapter under which the visas were refused; and

(v) the number of such nationals that were refused under section 1184(b) of this title as a percentage of the visas that were issued to such nationals.

(C) Certification

Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) Consideration of countries in the visa waiver program

Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) Definition

In this paragraph, the term ''appropriate congressional committees'' means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(8) Nonimmigrant visa refusal rate flexibility

(A) Certification

(i) In general

On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic travel authorization system required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic travel authorization system are in place.

(ii) Notification to Congress

The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

(iii) Temporary suspension of waiver authority

Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary's waiver authority under subparagraph (B) shall be suspended beginning on July 1,

2009, until such time as the Secretary makes such notification.

(iv) Rule of construction

Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

(B) Waiver

After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

(i) the country meets all security requirements of this section;

(ii) the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

(v)(I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

(C) Maximum visa overstay rate

(i) Requirement to establish

After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

(ii) Visa overstay rate defined

In this paragraph the term ''visa overstay rate'' means, with respect to a country, the ratio of—

(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

(iii) Report and publication

The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

(9) Discretionary security-related considerations

In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

(A) airport security standards in the country;

(B) whether the country assists in the operation of an effective air marshal program;

(C) the standards of passports and travel documents issued by the country; and

(D) other security-related factors, including the country's cooperation with the United States' initiatives toward combating terrorism and the country's cooperation with the United States intelligence community in sharing information regarding terrorist threats.

(10) Technical assistance

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

(11) Independent review

(A) In general

Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection (c)(5)(A), the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

(B) Reporting requirement

The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the inde-

pendent intelligence assessment required under subparagraph (A).

(C) Contents

The independent intelligence assessment conducted by the Director shall include—

(i) a review of all current, credible terrorist threats of the subject country;

(ii) an evaluation of the subject country's counterterrorism efforts;

(iii) an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions;

(iv) an assessment of the risks associated with including the subject country in the program; and

(v) recommendations to mitigate the risks identified in clause (iv).

(d) Authority

Notwithstanding any other provision of this section, the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section. The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

(e) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section,

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B) of this section.

(2) Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) Business aircraft requirements

(A) In general

For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations[2] that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) Collections

In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 1356(h) of this title.

(f) Duration and termination of designation

(1) In general

(A) Determination and notification of disqualification rate

Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) Probationary status

If the program country's disqualification rate is greater than 2 percent but less than

[2] So in original. Probably should be followed by a comma.

3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) Termination of designation

Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) Termination of probationary status

(A) In general

If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section[3] (c)(2)(C) of this section, or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) Effective date

A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a) of this section.

(3) Nonapplicability of certain provisions

Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) "Disqualification rate" defined

For purposes of this subsection, the term ''disqualification rate'' means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) Failure to report passport thefts

If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D) of this section, the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(g) Visa application sole method to dispute denial of waiver based on a ground of inadmissibility

In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 1182(a) of this title that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9) of this section, the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) Use of information technology systems

(1) Automated entry-exit control system

(A) System

Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Data collection by carriers

Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4) of this section.

(ii) Data provision by carriers

Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) Calculation

The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

[3] So in original. Probably should be ''subsection''.

(C) Reporting

(i) Percentage of nationals lacking departure record

As part of the annual report required to be submitted under section 1365a(e)(1) of this title, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) System effectiveness

Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 1365a(e)(1) of this title.

(2) Automated data sharing system

(A) System

The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Supplying information to immigration officers conducting inspections at ports of entry

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 1225 of this title to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) Supplying photographs of inadmissible aliens

The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) Maintaining records on applications for admission

The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) Electronic travel authorization system

(A) System

The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic travel authorization system (referred to in this paragraph as the ''System'') to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the[4] alien to travel to the United States.

(B) Fees

The Secretary of Homeland Security may charge a fee for the use of the System, which shall be—

(i) set at a level that will ensure recovery of the full costs of providing and administering the System; and

(ii) available to pay the costs incurred to administer the System.

(C) Validity

(i) Period

The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

(ii) Limitation

A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

(iii) Not a determination of visa eligibility

A determination by the Secretary of Homeland Security that an alien who ap-

[4] So in original. Probably should be ''an''.

plied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

(iv) Judicial review

Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

(D) Report

Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

(i) the Committee on Homeland Security of the House of Representatives;

(ii) the Committee on the Judiciary of the House of Representatives;

(iii) the Committee on Foreign Affairs of the House of Representatives;

(iv) the Permanent Select Committee on Intelligence of the House of Representatives;

(v) the Committee on Appropriations of the House of Representatives;

(vi) the Committee on Homeland Security and Governmental Affairs of the Senate;

(vii) the Committee on the Judiciary of the Senate;

(viii) the Committee on Foreign Relations of the Senate;

(ix) the Select Committee on Intelligence of the Senate; and

(x) the Committee on Appropriations of the Senate.

(i) Exit system

(1) In general

Not later than one year after August 3, 2007, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

(2) System requirements

The system established under paragraph (1) shall—

(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

(3) Report

Not later than 180 days after August 3, 2007, the Secretary shall submit to Congress a report that describes—

(A) the progress made in developing and deploying the exit system established under this subsection; and

(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.

(June 27, 1952, ch. 477, title II, ch. 2, §217, as added Pub. L. 99–603, title III, §313(a), Nov. 6, 1986, 100 Stat. 3435; amended Pub. L. 100–525, §2(p)(1), (2), Oct. 24, 1988, 102 Stat. 2613; Pub. L. 101–649, title II, §201(a), Nov. 29, 1990, 104 Stat. 5012; Pub. L. 102–232, title III, §§303(a)(1), (2), 307(*l*)(3), Dec. 12, 1991, 105 Stat. 1746, 1756; Pub. L. 103–415, §1(m), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103–416, title II, §§210, 211, Oct. 25, 1994, 108 Stat. 4312, 4313; Pub. L. 104–208, div. C, title III, §308(d)(4)(F), (e)(9), title VI, §635(a)–(c)(1), (3), Sept. 30, 1996, 110 Stat. 3009–618, 3009–620, 3009–702, 3009–703; Pub. L. 105–119, title I, §125, Nov. 26, 1997, 111 Stat. 2471; Pub. L. 105–173, §§1, 3, Apr. 27, 1998, 112 Stat. 56; Pub. L. 106–396, title I, §101(a), title II, §§201–207, title IV, §403(a)–(d), Oct. 30, 2000, 114 Stat. 1637–1644, 1647, 1648; Pub. L. 107–56, title IV, §417(c), (d), Oct. 26, 2001, 115 Stat. 355; Pub. L. 107–173, title III, §307(a), May 14, 2002, 116 Stat. 556; Pub. L. 110–53, title VII, §711(c), (d)(1), Aug. 3, 2007, 121 Stat. 339, 341.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–53, §711(d)(1)(A)(i), designated concluding provisions as par. (10) and inserted heading.

Subsec. (a)(11). Pub. L. 110–53, §711(d)(1)(A)(ii), added par. (11).

Subsec. (c)(2)(D). Pub. L. 110–53, §711(d)(1)(B)(i)(I), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''The government of the country certifies that it reports to the United States Government on a timely basis the theft of blank passports issued by that country.''

Subsec. (c)(2)(E), (F). Pub. L. 110–53, §711(d)(1)(B)(i)(II), added subpars. (E) and (F).

Subsec. (c)(5)(A)(i). Pub. L. 110–53, §711(d)(1)(B)(ii)(I), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in introductory provisions.

Subsec. (c)(5)(A)(i)(III). Pub. L. 110–53, §711(d)(1)(B)(ii)(II)(bb)(AA), substituted '', the Committee on Foreign Affairs, and the Committee on Homeland Security,'' for ''and the Committee on International Relations'' and '', the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs'' for ''and the Committee on Foreign Relations''.

Subsec. (c)(5)(A)(i)(IV). Pub. L. 110–53, §711(d)(1)(B)(ii)(II)(aa), (bb)(BB), (cc), added subcl. (IV).

Subsec. (c)(5)(A)(ii), (iii), (B)(i), (iii). Pub. L. 110–53, §711(d)(1)(B)(ii)(I), substituted ''Secretary of Homeland Security'' for ''Attorney General'' wherever appearing.

Subsec. (c)(5)(B)(iv). Pub. L. 110–53, §711(d)(1)(B)(ii)(III), added cl. (iv).

Subsec. (c)(8), (9). Pub. L. 110–53, §711(c), added pars. (8) and (9).

Subsec. (c)(10), (11). Pub. L. 110–53, §711(d)(1)(B)(iii), added pars. (10) and (11).

Subsec. (d). Pub. L. 110–53, §711(d)(1)(C), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in first sentence and inserted at end ''The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.''

Subsec. (f)(5). Pub. L. 110–53, §711(d)(1)(D), substituted ''Secretary of Homeland Security'' for ''Attorney Gen-

eral'' in two places and ''theft or loss of passports'' for ''theft of blank passports''.

Subsec. (h)(3). Pub. L. 110–53, § 711(d)(1)(E), added par. (3).

Subsec. (i). Pub. L. 110–53, § 711(d)(1)(F), added subsec. (i).

2002—Subsec. (c)(2)(D). Pub. L. 107–173, § 307(a)(1), added subpar. (D).

Subsec. (c)(5)(A)(i). Pub. L. 107–173, § 307(a)(2), substituted ''2 years'' for ''5 years'' in introductory provisions.

Subsec. (f)(5). Pub. L. 107–173, § 307(a)(3), added par. (5).

2001—Subsec. (a)(3). Pub. L. 107–56, § 417(d), which directed the substitution of ''(A) IN GENERAL.—Except as provided in subparagraph (B), on or after'' for ''On or after'' and the addition of subpar. (B), was executed making the substitution for ''On and after'' and adding subpar. (B) to reflect the probable intent of Congress.

Pub. L. 107–56, § 417(c), substituted ''2003,'' for ''2007,''.

2000—Pub. L. 106–396, § 101(a)(1), in section catchline struck out ''pilot'' before ''program''.

Subsec. (a). Pub. L. 106–396, §§ 101(a)(2)(A), (B), 403(c), struck out ''pilot'' before ''program'' in heading and two places in introductory provisions and inserted concluding provisions.

Subsec. (a)(1). Pub. L. 106–396, § 101(a)(2)(C), substituted ''program'' for ''pilot program period (as defined in subsection (e) of this section)''.

Subsec. (a)(2). Pub. L. 106–396, § 101(a)(2)(D), in heading struck out ''pilot'' before ''program''.

Subsec. (a)(2)(A). Pub. L. 106–396, § 201, inserted '', either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions,'' after ''to extend)''.

Subsec. (a)(3), (4). Pub. L. 106–396, § 202(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–396, § 403(a), substituted '', including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section. The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement'' for ''which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer''.

Pub. L. 106–396, § 202(a)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6), (7). Pub. L. 106–396, § 202(a)(1), designated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 106–396, § 403(b), inserted ''or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations'' after ''regulations''.

Pub. L. 106–396, § 202(a)(1), designated par. (7) as (8).

Subsec. (a)(9). Pub. L. 106–396, § 203(a), added par. (9).

Subsec. (b). Pub. L. 106–396, § 101(a)(3), struck out ''pilot'' before ''program'' in introductory provisions.

Subsec. (c). Pub. L. 106–396, § 101(a)(4)(A), in heading struck out ''pilot'' before ''program''.

Subsec. (c)(1). Pub. L. 106–396, § 101(a)(4)(B), struck out ''pilot'' before ''program''.

Subsec. (c)(2). Pub. L. 106–396, § 101(a)(4)(C), in introductory provisions, substituted ''subsection (f)'' for ''subsection (g)'' and struck out ''pilot'' before ''program''.

Subsec. (c)(2)(B). Pub. L. 106–396, § 202(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.''

Subsec. (c)(2)(C). Pub. L. 106–396, § 204(a), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.''

Subsec. (c)(3). Pub. L. 106–396, § 101(a)(4)(D)(i), struck out ''(within the pilot program period)'' after ''fiscal year'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 106–396, § 101(a)(4)(D)(ii), struck out ''pilot'' before ''program'' in two places in introductory provisions.

Subsec. (c)(3)(B). Pub. L. 106–396, § 101(a)(4)(D)(iii), struck out ''pilot'' before ''program'' in introductory provisions.

Subsec. (c)(5). Pub. L. 106–396, § 204(b), added par. (5).

Subsec. (c)(6). Pub. L. 106–396, § 206, added par. (6).

Subsec. (c)(7). Pub. L. 106–396, § 207, added par. (7).

Subsec. (e)(1). Pub. L. 106–396, §§ 101(a)(5)(A), 403(d)(1)(A), in introductory provisions, substituted ''carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier'' in two places and struck out ''pilot'' before ''program''.

Subsec. (e)(1)(B). Pub. L. 106–396, § 101(a)(5)(B), struck out ''pilot'' before ''program''.

Subsec. (e)(1)(D). Pub. L. 106–396, § 205(b), added subpar. (D).

Subsec. (e)(2). Pub. L. 106–396, § 403(d)(1), substituted ''carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier'' and ''failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier's failure''.

Subsec. (e)(3). Pub. L. 106–396, § 403(d)(2), added par. (3).

Subsec. (f). Pub. L. 106–396, § 101(a)(6), redesignated subsec. (g) as (f) and struck out heading and text of former subsec. (f). Text read as follows: ''For purposes of this section, the term 'pilot program period' means the period beginning on October 1, 1988, and ending on April 30, 2000.''

Subsec. (f)(1)(A), (C). Pub. L. 106–396, § 101(a)(7)(A), (B), struck out ''pilot'' before ''program''.

Subsec. (f)(2) to (4). Pub. L. 106–396, § 101(a)(7)(C)–(E), substituted ''as a program country'' for ''as a pilot program country'' in two places in par. (2)(A) and struck out ''pilot'' before ''program'' in pars. (3) and (4)(A).

Subsec. (g). Pub. L. 106–396, § 203(b), added subsec. (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 106–396, § 205(a), added subsec. (h).

1998—Subsec. (c)(2). Pub. L. 105–173, § 3, reenacted heading without change and amended text generally. Prior to amendment, text consisted of introductory provisions and subpars. (A) to (D) relating to low nonimmigrant visa refusal rate for previous 2-year period, low nonimmigrant visa refusal rate for each of 2 previous years, machine readable passport program, and law enforcement interests.

Subsec. (f). Pub. L. 105–173, § 1, substituted ''2000'' for ''1998''.

1997—Subsec. (f). Pub. L. 105–119 reenacted subsec. heading without change and amended text generally, substituting ''April 30, 1998'' for ''September 30, 1997''.

1996—Subsec. (a). Pub. L. 104–208, § 635(a)(1), in introductory provisions, substituted ''Attorney General, in consultation with the Secretary of State'' for ''Attorney General and the Secretary of State, acting jointly''.

Subsec. (a)(2)(B). Pub. L. 104–208, §635(c)(3), struck out ''or is designated as a pilot program country with probationary status under subsection (g) of this section'' after ''subsection (c) of this section''.

Subsec. (b)(2). Pub. L. 104–208, §308(e)(9), substituted ''removal of'' for ''deportation against''.

Subsec. (c)(1). Pub. L. 104–208, §635(a)(2), substituted ''Attorney General, in consultation with the Secretary of State,'' for ''Attorney General and the Secretary of State acting jointly''.

Subsec. (c)(3)(A)(i). Pub. L. 104–208, §308(d)(4)(F), substituted ''denied admission at the time of arrival'' for ''excluded from admission''.

Subsec. (d). Pub. L. 104–208, §635(a)(3), substituted ''Attorney General, in consultation with the Secretary of State'' for ''Attorney General and the Secretary of State, acting jointly''.

Subsec. (f). Pub. L. 104–208, §635(b), substituted ''1997.'' for ''1996''.

Subsec. (g). Pub. L. 104–208, §635(c)(1), amended heading and text of subsec. (g) generally. Prior to amendment, text provided authority for Attorney General and Secretary of State to designate countries as pilot program countries with probationary status.

Subsec. (g)(4)(A)(i). Pub. L. 104–208, §308(d)(4)(F), substituted ''denied admission at the time of arrival'' for ''excluded from admission''.

1994—Subsec. (a)(2)(B). Pub. L. 103–416, §211(1), inserted before period at end ''or is designated as a pilot program country with probationary status under subsection (g) of this section''.

Subsec. (c)(2). Pub. L. 103–416, §211(3), substituted ''Except as provided in subsection (g)(4) of this section, a country'' for ''A country''.

Subsec. (f). Pub. L. 103–416, §210, substituted ''1996'' for ''1995.''.

Pub. L. 103–415 substituted ''1995'' for ''1994''.

Subsec. (g). Pub. L. 103–416, §211(2), added subsec. (g).

1991—Subsec. (a). Pub. L. 102–232, §307(*l*)(3), substituted ''paragraph (7)(B)(i)(II)'' for ''paragraph (26)(B)''.

Subsec. (a)(4). Pub. L. 102–232, §303(a)(1)(A), in heading substituted ''into the United States'' for ''by sea or air''.

Subsec. (b). Pub. L. 102–232, §303(a)(1)(B), made technical amendment to heading.

Subsec. (e)(1). Pub. L. 102–232, §303(a)(2), substituted ''subsection (a)(4)'' for ''subsection (a)(4)(C)''.

1990—Subsec. (a)(2). Pub. L. 101–649, §201(a)(1), inserted '', and presents a passport issued by,'' after ''is a national of''.

Subsec. (a)(3). Pub. L. 101–649, §201(a)(2), in heading substituted reference to immigration forms for reference to entry control and waiver forms, and in text substituted ''completes such immigration form as the Attorney General shall establish'' for ''—

''(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3) of this section, and

''(B) executes a waiver of review and appeal described in subsection (b)(4) of this section''.

Subsec. (a)(4). Pub. L. 101–649, §201(a)(3), added par. (4) and struck out former par. (4) which waived visa requirement for certain aliens having round-trip transportation tickets.

Subsec. (a)(7). Pub. L. 101–649, §201(a)(4), added par. (7).

Subsec. (b). Pub. L. 101–649, §201(a)(5), redesignated subsec. (b)(4) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out subsec. (b) heading ''Conditions before pilot program can be put into operation'' and pars. (1) to (3) which related to prior notice to Congress, automated data arrival and departure system, and visa waiver information form, respectively.

Subsec. (c)(1). Pub. L. 101–649, §201(a)(6)(A), substituted in heading, ''In general'' for ''Up to 8 countries'' and in text substituted ''any country as a pilot program country if it meets the requirements of paragraph (2)'' for ''up to eight countries as pilot program countries for purposes of the pilot program''.

Subsec. (c)(2). Pub. L. 101–649, §201(a)(6)(B), substituted ''Qualifications'' for ''Initial qualifications'' in heading and ''A country'' for ''For the initial period described in paragraph (4), a country'' in introductory provisions, and added subpars. (C) and (D).

Subsec. (d). Pub. L. 101–649, §201(a)(7), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–649, §201(a)(7), (8), redesignated subsec. (d) as (e) and added subpar. (C) at end of par. (1). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–649, §201(a)(7), (9), redesignated subsec. (e) as (f) and substituted ''on October 1, 1988, and ending on September 30, 1994'' for ''at the end of the 30-day period referred to in subsection (b)(1) of this section and ending on the last day of the third fiscal year which begins after such 30-day period''.

1988—Pub. L. 100–525, §2(p)(1), made technical amendment to directory language of Pub. L. 99–603, §313(a), which enacted this section.

Subsec. (a). Pub. L. 100–525, §2(p)(2), substituted ''hereinafter'' for ''hereafter''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–53, title VII, §711(d)(2), Aug. 3, 2007, 121 Stat. 345, provided that: ''Section 217(a)(11) of the Immigration and Nationality Act [8 U.S.C. 1187(a)(11)], as added by paragraph (1)(A)(ii), shall take effect on the date that is 60 days after the date on which the Secretary of Homeland Security publishes notice in the Federal Register of the requirement under such paragraph.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(F), (e)(9) 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 1991 AMENDMENT

Amendment by section 303(a)(1), (2) 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.

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 201(d) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1323 of this title] shall take effect as of the date of the enactment of this Act [Nov. 29, 1990].''

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.

MODERNIZING AND STRENGTHENING OF SECURITY OF VISA WAIVER PROGRAM

Pub. L. 110–53, title VII, §711(b), Aug. 3, 2007, 121 Stat. 338, provided that: ''It is the sense of Congress that—

''(1) the United States should modernize and strengthen the security of the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) by simultaneously—

''(A) enhancing program security requirements; and

''(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

''(i) that are actively cooperating with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information; and

''(ii) whose nationals have demonstrated their compliance with the provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] regarding the purpose and duration of their admission to the United States; and

''(2) the modernization described in paragraph (1) will—

''(A) enhance bilateral cooperation on critical counterterrorism and information sharing initiatives;

''(B) support and expand tourism and business opportunities to enhance long-term economic competitiveness; and

''(C) strengthen bilateral relationships.''

MACHINE READABLE PASSPORTS

Pub. L. 107–56, title IV, § 417(a), (b), Oct. 26, 2001, 115 Stat. 355, provided that:

''(a) AUDITS.—The Secretary of State shall, each fiscal year until September 30, 2007—

''(1) perform annual audits of the implementation of section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B));

''(2) check for the implementation of precautionary measures to prevent the counterfeiting and theft of passports; and

''(3) ascertain that countries designated under the visa waiver program have established a program to develop tamper-resistant passports.

''(b) PERIODIC REPORTS.—Beginning one year after the date of enactment of this Act [Oct. 26, 2001], and every year thereafter until 2007, the Secretary of State shall submit a report to Congress setting forth the findings of the most recent audit conducted under subsection (a)(1).''

REPORT REQUIRED

Pub. L. 106–396, title IV, § 403(e), Oct. 30, 2000, 114 Stat. 1649, provided that: ''Not later than two years after the date of the enactment of this Act [Oct. 30, 2000], the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate assessing the effectiveness of the program implemented under the amendments made by this section [amending this section] for simplifying the admission of business travelers from visa waiver program countries and compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by such travelers under that program.''

TRANSITION PROVISIONS

Section 635(c)(2) of div. C of Pub. L. 104–208 provided that: ''A country designated as a pilot program country with probationary status under section 217(g) of the Immigration and Nationality Act [8 U.S.C. 1187(g)] (as in effect on the day before the date of the enactment of this Act [Sept. 30, 1996]) shall be considered to be designated as a pilot program country on and after such date, subject to placement in probationary status or termination of such designation under such section (as amended by paragraph (1)).''

OPERATION OF AUTOMATED DATA ARRIVAL AND DEPARTURE CONTROL SYSTEM; REPORT TO CONGRESS

Section 201(c) of Pub. L. 101–649 provided that: ''By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program.''

REPORT ON VISA WAIVER PILOT PROGRAM

Section 405 of Pub. L. 99–603 provided that:

''(a) MONITORING AND REPORT ON THE PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act [8 U.S.C. 1187] and shall report to the Congress not later than two years after the beginning of the program.

''(b) DETAILS IN REPORT.—The report shall include—

''(1) an evaluation of the program, including its impact—

''(A) on the control of alien visitors to the United States,

''(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

''(C) on the United States tourism industry; and

''(2) recommendations—

''(A) on extending the pilot program period, and

''(B) on increasing the number of countries that may be designated under the program.''

§ 1188. Admission of temporary H–2A workers

(a) Conditions for approval of H–2A petitions

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2) of this section) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) of this section with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three

years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H–2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H–2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A) of this section) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) of this section if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H–2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H–2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H–2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H–2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) of this section with respect to a petition for the importation of such worker.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) of this section or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time

a new determination is requested, make a new determination on the request for certification in the case of an H–2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term ''eligible individual'' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term ''H–2A worker'' means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 218, formerly § 216, as added Pub. L. 99–603, title III, § 301(c), Nov. 6, 1986, 100 Stat. 3411; renumbered § 218 and amended Pub. L. 100–525, § 2(*l*)(2), (3), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 102–232, title III, §§ 307(*l*)(4), 309(b)(8), Dec. 12, 1991, 105 Stat. 1756, 1759; Pub. L. 103–416, title II, § 219(z)(8), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 106–78, title VII, § 748, Oct. 22, 1999, 113 Stat. 1167; Pub. L. 106–554, § 1(a)(1) [title I, § 105], Dec. 21, 2000, 114 Stat. 2763, 2763A–11.)

REFERENCES IN TEXT

Section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(3)(B)(iii), is section 403(a)(4)(D) of Pub. L. 99–603, which is set out in a note under this section.

CODIFICATION

Section was classified to section 1186 of this title prior to its renumbering by Pub. L. 100–525.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106–554 inserted at end ''The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) of this section with respect to a petition for the importation of such worker.''

1999—Subsec. (c)(1). Pub. L. 106–78, § 748(1), substituted ''45 days'' for ''60 days''.

Subsec. (c)(3)(A). Pub. L. 106–78, § 748(2), substituted ''30 days'' for ''20 days'' in introductory provisions.

1994—Subsec. (i)(1). Pub. L. 103–416 made technical correction to directory language of Pub. L. 102–232, § 309(b)(8). See 1991 Amendment note below.

1991—Subsec. (g)(3). Pub. L. 102–232, § 307(*l*)(4), substituted ''section 1182(a)(5)(A)(i)'' for ''section 1182(a)(14)''.

Subsec. (i)(1). Pub. L. 102–232, § 309(b)(8), as amended by Pub. L. 103–416, substituted ''1324a(h)(3)'' for ''1324a(h)''.

1988—Pub. L. 100–525, § 2(*l*)(2)(A), made technical amendment to directory language of Pub. L. 99–603, § 301(c), which enacted this section.

Subsec. (c)(4). Pub. L. 100–525, § 2(*l*)(3), substituted ''accommodations'' for ''accomodations'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(8) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

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 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.

EFFECTIVE DATE; REGULATIONS

Section 301(d), (e) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that:

''(d) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending sections 1101 and 1184] apply to petitions and applications filed under sections 214(c) and 218 of the Immigration and Nationality Act [8 U.S.C. 1184(c), 1188] on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986] (hereinafter in this section referred to as the 'effective date').

''(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.''

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.

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 301(f) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: ''It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188].''

REPORTS ON H–2A PROGRAM

Section 403 of Pub. L. 99–603 provided that:

''(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H–2A) program, which shall include—

''(1) the number of foreign workers permitted to be employed under the program in each year;

''(2) the compliance of employers and foreign workers with the terms and conditions of the program;

''(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

''(4) recommendations for modifications of the program, including—

''(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

''(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

''(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

''(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H–2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H–2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

''(b) DEADLINES.—A report on the H–2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.''

[Functions of President under section 403 of Pub. L. 99–603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism)[1]; and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

(2) Procedure

(A) Notice

(i) To congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2339B of title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

[1] So in original. The closing parenthesis probably should follow ''section 1182(a)(3)(B) of this title''.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

(B) Classified information

The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(4) Period of designation

(A) In general

A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section.

(B) Review of designation upon petition

(i) In general

The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

(ii) Petition period

For purposes of clause (i)—

(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

(iii) Procedures

Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

(iv) Determination

(I) In general

Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

(II) Classified information

The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(III) Publication of determination

A determination made by the Secretary under this clause shall be published in the Federal Register.

(IV) Procedures

Any revocation by the Secretary shall be made in accordance with paragraph (6).

(C) Other review of designation

(i) In general

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

(ii) Procedures

If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) Publication of results of review

The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

(5) Revocation by Act of Congress

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) Revocation based on change in circumstances

(A) In general

The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or

(ii) the national security of the United States warrants a revocation.

(B) Procedure

The procedural requirements of paragraphs (2) and (3) shall apply to a revocation

under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

(7) Effect of revocation

The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) Use of designation in trial or hearing

If a designation under this subsection has become effective under paragraph (2)(B) a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

(b) Amendments to a designation

(1) In general

The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

(2) Procedure

Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) of this section shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) of this section shall also apply to an amended designation.

(3) Administrative record

The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

(4) Classified information

The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(c) Judicial review of designation

(1) In general

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

(2) Basis of review

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2),[2] or

(E) not in accord with the procedures required by law.

(4) Judicial review invoked

The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

(d) Definitions

As used in this section—

(1) the term ''classified information'' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term ''national security'' means the national defense, foreign relations, or economic interests of the United States;

(3) the term ''relevant committees'' means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term ''Secretary'' means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 2, § 219, as added Pub. L. 104–132, title III, § 302(a), Apr. 24, 1996, 110 Stat. 1248; amended Pub. L. 104–208, div. C, title III, § 356, title VI, § 671(c)(1), Sept. 30, 1996, 110 Stat. 3009–644, 3009–722; Pub. L. 107–56, title IV, § 411(c), Oct. 26, 2001, 115 Stat. 349; Pub. L. 108–458, title VII, § 7119(a)–(c), Dec. 17, 2004, 118 Stat. 3801, 3802.)

REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (d)(1), is section 1(a) of Pub. L. 96–456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Another section 411(c) of Pub. L. 107–56 enacted provisions set out as an Effective Date of 2001 Amendment note under section 1182 of this title.

AMENDMENTS

2004—Subsec. (a)(3)(B). Pub. L. 108–458, § 7119(c)(1)(A), substituted ''subsection (c)'' for ''subsection (b)''.

[2] So in original. The comma probably should be a semicolon.

Subsec. (a)(4)(A). Pub. L. 108–458, § 7119(a)(1), substituted ''A designation'' for ''Subject to paragraphs (5) and (6), a designation'' and ''until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section'' for ''for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)''.

Subsec. (a)(4)(B). Pub. L. 108–458, § 7119(a)(2), added subpar. (B) and struck out former subpar. (B) which contained provisions authorizing Secretary to redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subpar. (A) or at the end of any 2-year redesignation period.

Subsec. (a)(4)(C). Pub. L. 108–458, § 7119(a)(3), added subpar. (C).

Subsec. (a)(6)(A). Pub. L. 108–458, § 7119(c)(1)(B)(i), substituted ''at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)'' for ''or a redesignation made under paragraph (4)(B)'' in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 108–458, § 7119(c)(1)(B)(ii), struck out ''or redesignation'' after ''the designation''.

Subsec. (a)(7). Pub. L. 108–458, § 7119(c)(1)(C), struck out '', or the revocation of a redesignation under paragraph (6),'' before ''shall not affect''.

Subsec. (a)(8). Pub. L. 108–458, § 7119(c)(1)(D), struck out '', or if a redesignation under this subsection has become effective under paragraph (4)(B),'' before ''a defendant in a criminal action'' and ''or redesignation'' after ''such designation''.

Subsec. (b). Pub. L. 108–458, § 7119(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–458, § 7119(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108–458, § 7119(c)(2)(A), substituted ''in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review'' for ''of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation''.

Subsec. (c)(2) to (4). Pub. L. 108–458, § 7119(c)(2)(B)–(D), inserted '', amended designation, or determination in response to a petition for revocation'' after ''designation'' wherever appearing.

Subsec. (d). Pub. L. 108–458, § 7119(b)(1), redesignated subsec. (c) as (d).

2001—Subsec. (a)(1)(B). Pub. L. 107–56, § 411(c)(1), inserted ''or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism'' after ''section 1182(a)(3)(B) of this title''.

Subsec. (a)(1)(C). Pub. L. 107–56, § 411(c)(2), inserted ''or terrorism'' after ''the terrorist activity''.

Subsec. (a)(2)(A). Pub. L. 107–56, § 411(c)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Seven days before making a designation under this subsection, the Secretary shall, by classified communication—

''(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

''(ii) seven days after such notification, publish the designation in the Federal Register.''

Subsec. (a)(2)(B)(i). Pub. L. 107–56, § 411(c)(4), substituted ''subparagraph (A)(ii)'' for ''subparagraph (A)''.

Subsec. (a)(2)(C). Pub. L. 107–56, § 411(c)(5), substituted ''paragraph (2)(A)(i)'' for ''paragraph (2)''.

Subsec. (a)(3)(B). Pub. L. 107–56, § 411(c)(6), substituted ''subsection (b) of this section'' for ''subsection (c) of this section''.

Subsec. (a)(4)(B). Pub. L. 107–56, § 411(c)(7), inserted after first sentence ''The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.''

Subsec. (a)(6)(A). Pub. L. 107–56, § 411(c)(8)(A), inserted ''or a redesignation made under paragraph (4)(B)'' after ''paragraph (1)'' in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 107–56, § 411(c)(8)(B), inserted ''or redesignation'' after ''basis for the designation'' and struck out ''of the designation'' before semicolon.

Subsec. (a)(6)(A)(ii). Pub. L. 107–56, § 411(c)(8)(C), struck out ''of the designation'' before period at end.

Subsec. (a)(6)(B). Pub. L. 107–56, § 411(c)(9), substituted ''and (3)'' for ''through (4)'' and inserted ''Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.'' at end.

Subsec. (a)(7). Pub. L. 107–56, § 411(c)(10), inserted '', or the revocation of a redesignation under paragraph (6),'' after ''paragraph (5) or (6)''.

Subsec. (a)(8). Pub. L. 107–56, § 411(c)(11), substituted ''paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)'' for ''paragraph (1)(B)'' and inserted ''or an alien in a removal proceeding'' after ''criminal action'' and ''or redesignation'' before ''as a defense''.

1996—Pub. L. 104–208, § 671(c)(1), made technical amendment to section catchline.

Subsec. (b)(3)(D), (E). Pub. L. 104–208, § 356, added subpars. (D) and (E).

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 AMENDMENT

Amendment by section 356 of Pub. L. 104–208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, see section 358 of Pub. L. 104–208, set out as a note under section 1182 of this title.

Section 671(c)(7) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this subsection [amending this section and sections 1105a and 1252a of this title] shall take effect as if included in the enactment of subtitle A of title IV of AEPDA [AEDPA, Pub. L. 104–132].''

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.

SAVINGS PROVISION

Pub. L. 108–458, title VII, § 7119(d), Dec. 17, 2004, 118 Stat. 3803, provided that: ''For purposes of applying section 219 of the Immigration and Nationality Act [8 U.S.C. 1189] on or after the date of enactment of this Act [Dec. 17, 2004], the term 'designation', as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of en-

actment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).''

PART III—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

(1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue

(A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and

(B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101(a)(15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.

(2) The Secretary of State shall provide to the Service an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at the United States ports of entry before the arrival of the alien at such a port of entry.

(b) Registration; photographs; waiver of requirement

Each alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of State in the case of any alien who is within that class of nonimmigrants enumerated in sections 1101(a)(15)(A), and 1101(a)(15)(G) of this title, or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.

(c) Period of validity; requirement of visa

An immigrant visa shall be valid for such period, not exceeding six months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: *Provided*, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

(d) Physical examination

Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

(e) Surrender of visa

Each immigrant shall surrender his immigrant visa to the immigration officer at the port of entry, who shall endorse on the visa the date and the port of arrival, the identity of the vessel or other means of transportation by which the immigrant arrived, and such other endorsements as may be by regulations required.

(f) Surrender of documents

Each nonimmigrant shall present or surrender to the immigration officer at the port of entry such documents as may be by regulation required. In the case of an alien crewman not in possession of any individual documents other than a passport and until such time as it becomes practicable to issue individual documents, such alien crewman may be admitted, subject to the provisions of this part, if his name appears in the crew list of the vessel or aircraft on which he arrives and the crew list is visaed by a consular officer, but the consular officer shall have the right to deny admission to any alien crewman from the crew list visa.

(g) Nonissuance of visas or other documents

No visa or other documentation shall be issued to an alien if (1) it appears to the consular offi-

cer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law: *Provided*, That a visa or other documentation may be issued to an alien who is within the purview of section 1182(a)(4) of this title, if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 1183 of this title: *Provided further*, That a visa may be issued to an alien defined in section 1101(a)(15)(B) or (F) of this title, if such alien is otherwise entitled to receive a visa, upon receipt of a notice by the consular officer from the Attorney General of the giving of a bond with sufficient surety in such sum and containing such conditions as the consular officer shall prescribe, to insure that at the expiration of the time for which such alien has been admitted by the Attorney General, as provided in section 1184(a) of this title, or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(h) Nonadmission upon arrival

Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted[1] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

(i) Revocation of visas or documents

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: *Provided*, That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1323(b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien's embarkation. There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.

[1] So in original. Probably should be followed by ''to''.

(June 27, 1952, ch. 477, title II, ch. 3, § 221, 66 Stat. 191; Pub. L. 87–301, § 4, Sept. 26, 1961, 75 Stat. 651; Pub. L. 89–236, §§ 11(a), (b), 17, Oct. 3, 1965, 79 Stat. 918, 919; Pub. L. 97–116, § 18(f), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 99–653, § 5(a), formerly § 5(a)(a)–(c), Nov. 14, 1986, 100 Stat. 3656, renumbered § 5(a), Pub. L. 100–525, § 8(d)(1), Oct. 24, 1988, 102 Stat. 2617; Pub. L. 101–649, title VI, § 603(a)(9), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 102–232, title III, § 302(e)(8)(C), Dec. 12, 1991, 105 Stat. 1746; Pub. L. 104–208, div. C, title III, § 308(d)(4)(G), (f)(2)(B), title VI, § 631, Sept. 30, 1996, 110 Stat. 3009–618, 3009–621, 3009–700; Pub. L. 107–173, title III, § 301, May 14, 2002, 116 Stat. 552; Pub. L. 108–458, title V, § 5304(a), Dec. 17, 2004, 118 Stat. 3736.)

AMENDMENTS

2004—Subsec. (i). Pub. L. 108–458 inserted at end ''There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.''

2002—Subsec. (a). Pub. L. 107–173 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1996—Subsec. (c). Pub. L. 104–208, § 631, substituted ''six months'' for ''four months'' and inserted ''; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States'' after ''within a similar class''.

Subsec. (f). Pub. L. 104–208, § 308(d)(4)(G), substituted ''deny admission to'' for ''exclude''.

Subsec. (h). Pub. L. 104–208, § 308(f)(2)(B), substituted ''be admitted'' for ''enter''.

1991—Subsec. (a). Pub. L. 102–232 struck out ''nonpreference,'' before ''immediate relative''.

1990—Subsec. (g). Pub. L. 101–649 substituted ''1182(a)(4) of this title'' for ''1182(a)(7), or section 1182(a)(15) of this title''.

1988—Subsecs. (a) to (c). Pub. L. 100–525 made technical correction to Pub. L. 99–653, § 5. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–653, § 5(a)(1), formerly § 5(a)(a), as redesignated by Pub. L. 100–525, in cl. (1) substituted ''specify the foreign state'' for ''specify the quota'', ''under such foreign state'' for ''under such quota'', ''special immigrant classification'' for ''special immigration classification'', and struck out ''one copy of'' after ''shall consist of''.

Subsec. (b). Pub. L. 99–653, § 5(a)(2), formerly § 5(a)(b), as redesignated by Pub. L. 100–525, amended subsec. (b) generally, striking out ''and fingerprinted'' after ''shall be registered'' and substituting ''sections 1101(a)(15)(A) and 1101(a)(15)(G) of this title'' for ''section 1101(a)(15)(A) and (G) of this title''.

Subsec. (c). Pub. L. 99–653, § 5(a)(3), formerly § 5(a)(c), as redesignated by Pub. L. 100–525, amended subsec. (c) generally, substituting ''during the fiscal year'' for ''during the year'', ''*Provided*, That the immigrant'' for ''*Provided*, the consular officer is in possession of the duplicate signed copy of the original visa, the immigrant'', and ''statutory fees'' for ''statutory fee''.

1981—Subsec. (a). Pub. L. 97–116 substituted a comma for the period after ''alien is charged''.

1965—Subsec. (a). Pub. L. 89–236, § 11(a), substituted a reference to preference, nonpreference, immediate relative, and special immigration classification, for a reference to nonquota categories to which immigrants are classified.

Subsec. (c). Pub. L. 89–236, §11(b), struck out references to ''quota'' wherever appearing.

Subsec. (g). Pub. L. 89–236, §17, inserted proviso permitting issuance of student or visitors visas in cases where the alien gives a bond so as to allow resolution of doubts in borderline cases in which the consular officer is uncertain as to the bona fides of the nonimmigrant's intention to remain in the United States temporarily.

1961—Subsec. (c). Pub. L. 87–301 provided that an immigrant visa issued to a child adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces or employed abroad by our Government, or temporarily abroad on business, shall remain valid to such time, but not exceeding three years, as the adoptive parent returns to the United States in due course of service, employment or business.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective Dec. 17, 2004, and applicable to revocations under sections 1155 and 1201(i) of this title made before, on, or after such date, see section 5304(d) of Pub. L. 108–458, set out as a note under section 1155 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(G), (f)(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.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

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 1986 AMENDMENT

Section 23(b) 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 sections 5, 6, 8, 9, and 10 [amending this section and sections 1202, 1301, 1302, and 1304 of this title and repealing section 1201a of this title] apply to applications for immigrant visas made, and visas issued, on or after November 14, 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 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.

PROCESSING OF VISA APPLICATIONS

Pub. L. 107–228, div. A, title II, §233, Sept. 30, 2002, 116 Stat. 1373, provided that:

''(a) IN GENERAL.—It shall be the policy of the Department [of State] to process each visa application from an alien classified as an immediate relative or as a K–1 nonimmigrant within 30 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service. In the case of an immigrant visa application where the petitioner is a relative other than an immediate relative, it should be the policy of the Department to process such an application within 60 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service.

''(b) DEFINITIONS.—In this section:

''(1) IMMEDIATE RELATIVE.—The term 'immediate relative' has the meaning given the term in section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)).

''(2) K–1 NONIMMIGRANT.—The term 'K–1 nonimmigrant' means a nonimmigrant alien described in section 101(a)(15)(K)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)(i)).''

PREVENTION OF CONSULATE SHOPPING

Pub. L. 107–56, title IV, §418, Oct. 26, 2001, 115 Stat. 355, provided that:

''(a) REVIEW.—The Secretary of State shall review how consular officers issue visas to determine if consular shopping is a problem.

''(b) ACTIONS TO BE TAKEN.—If the Secretary of State determines under subsection (a) that consular shopping is a problem, the Secretary shall take steps to address the problem and shall submit a report to Congress describing what action was taken.''

Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title II, §237], Nov. 29, 1999, 113 Stat. 1536, 1501A–430, provided that:

''(a) POLICY.—It shall be the policy of the Department of State to process immigrant visa applications of immediate relatives of United States citizens and nonimmigrant K–1 visa applications of fiances of United States citizens within 30 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service. In the case of an immigrant visa application where the sponsor of such applicant is a relative other than an immediate relative, it should be the policy of the Department of State to process such an application within 60 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service.

''(b) REPORTS.—Not later than 180 days after the date of enactment of this Act [Nov. 29, 1999], and not later than 1 year thereafter, the Secretary of State shall submit to the appropriate congressional committees [Committee on Foreign Affairs of the House of Representatives and Committee on Foreign Relations of the Senate] a report on the extent to which the Department of State is meeting the policy standards under subsection (a). Each report shall be based on a survey of the 22 consular posts which account for approximately 72 percent of immigrant visas issued and, in addition, the consular posts in Guatemala City, Nicosia, Caracas, Naples, and Jakarta. Each report should include data on the average time for processing each category of visa application under subsection (a), a list of the embassies and consular posts which do not meet the policy standards under subsection (a), the amount of funds collected worldwide for processing of visa applications during the most recent fiscal year, the estimated costs of processing such visa applications (based on the Department of State's most recent fee study), the steps being taken by the Department of State to achieve such policy standards, and results achieved by the interagency working group charged with the goal of reducing the overall processing time for visa applications.''

PERMITTING EXTENSION OF PERIOD OF VALIDITY OF IMMIGRANT VISAS FOR CERTAIN RESIDENTS OF HONG KONG

Section 154 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §302(d)(4), Dec. 12, 1991, 105 Stat. 1745, provided that:

''(a) EXTENDING PERIOD OF VALIDITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the limitation on the period of validity of an immigrant visa under section 221(c) of the Immigration and Nationality Act [8 U.S.C. 1201(c)] shall not apply in the case of an immigrant visa issued, on or after the date of the enactment of this Act [Nov. 29, 1990] and before September 1, 2001, to an alien described in subsection (b), but only if—

''(A) the alien elects, within the period of validity of the immigrant visa under such section, to have this section apply, and

''(B) before the date the alien seeks to be admitted to the United States for lawful permanent residence, the alien notifies the appropriate consular officer of the alien's intention to seek such admission and provides such officer with such information as the officer determines to be necessary to verify that the alien remains eligible for admission to the United States as an immigrant.

''(2) LIMITATION ON EXTENSION.—In no case shall the period of validity of a visa be extended under paragraph (1) beyond January 1, 2002.

''(3) TREATMENT UNDER NUMERICAL LIMITATIONS.—In applying the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] in the case of aliens for whose visas the period of validity is extended under this section, such limitations shall only apply at the time of original issuance of the visas and not at the time of admission of such aliens.

''(b) ALIENS COVERED.—An alien is described in this subsection if the alien—

''(1)(A) is chargeable under section 202 of the Immigration and Nationality Act [8 U.S.C. 1152] to Hong Kong or China, and

''(B)(i) is residing in Hong Kong as of the date of the enactment of this Act [Nov. 29, 1990] and is issued an immigrant visa under paragraph (1), (2), (4), or (5) of section 203(a) of the Immigration and Nationality Act [8 U.S.C. 1153(a)] (as in effect on the date of the enactment of this Act) or under section 203(a) or 203(b)(1) of such Act (as in effect on and after October 1, 1991), or (ii) is the spouse or child (as defined in subsection (d)) of an alien described in clause (i), if accompanying or following to join the alien in coming to the United States; or

''(2) is issued a visa under section 124 of this Act [enacting provisions set out as a note under section 1153 of this title].

''(c) TREATMENT OF CERTAIN EMPLOYEES IN HONG KONG.—

''(1) IN GENERAL.—In applying the proviso of section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403h], in the case of an alien described in paragraph (2), the Director may charge the entry of the alien against the numerical limitation for any fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1996) notwithstanding that the alien's entry is not made to the United States in that fiscal year so long as such entry is made before the end of fiscal year 1997.

''(2) ALIENS COVERED.—An alien is described in this paragraph if the alien—

''(A) is an employee of the Foreign Broadcast Information Service in Hong Kong, or

''(B) is the spouse or child (as defined in subsection (d)) of an alien described in subparagraph (A), if accompanying or following to join the alien in coming to the United States.

''[(3) Repealed. Pub. L. 102–232, title III, §302(d)(4)(C), Dec. 12, 1991, 105 Stat. 1745.]

''(d) TREATMENT OF CHILDREN.—In this section, the term 'child' has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)] and also includes (for purposes of this section and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] as it applies to this section) an alien who was the child (as so defined) of the alien as of the date of the issuance of an immigrant visa to the alien described in subsection (b)(1) or, in the case described in subsection (c), as of the date of charging of the entry of the alien under the proviso under section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403h].''

[Section 154 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.]

CUBAN POLITICAL PRISONERS AND IMMIGRANTS

Pub. L. 100–204, title IX, §903, Dec. 22, 1987, 101 Stat. 1401, as amended by Pub. L. 104–208, div. C, title III, §308(g)(7)(C)(iii), Sept. 30, 1996, 110 Stat. 3009–624, provided that:

''(a) PROCESSING OF CERTAIN CUBAN POLITICAL PRISONERS AS REFUGEES.—In light of the announcement of the Government of Cuba on November 20, 1987, that it would reimplement immediately the agreement of December 14, 1984, establishing normal migration procedures between the United States and Cuba, on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State and appropriate officers of the Immigration and Naturalization Service shall, in accordance with the procedures applicable to such cases in other countries, process any application for admission to the United States as a refugee from any Cuban national who was imprisoned for political reasons by the Government of Cuba on or after January 1, 1959, without regard to the duration of such imprisonment, except as may be necessary to reassure the orderly process of available applicants.

''(b) PROCESSING OF IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN THIRD COUNTRIES.—Notwithstanding section 212(f) and section 243(d) of the Immigration and Nationality Act [8 U.S.C. 1182(f), 1253(d)], on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State shall process immigrant visa applications by nationals of Cuba located in third countries on the same basis as immigrant visa applications by nationals of other countries.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'process' means the acceptance and review of applications and the preparation of necessary documents and the making of appropriate determinations with respect to such applications.

''(2) The term 'refugee' has the meaning given such term in section 101(a)(42) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(42)].''

Pub. L. 100–202, §101(a) [title VII], Dec. 22, 1987, 101 Stat. 1329, 1329–39, as amended by Pub. L. 104–208, div. C, title III, §308(g)(7)(C)(ii), Sept. 30, 1996, 110 Stat. 3009–624, provided that:

''SEC. 701. This title may be cited as 'Cuban Political Prisoners and Immigrants'.

''SEC. 702. (a) PROCESSING OF CERTAIN CUBAN POLITICAL PRISONERS AS REFUGEES.—In light of the announcement of the Government of Cuba on November 20, 1987, that it would reimplement immediately the agreement of December 14, 1984, establishing normal migration procedures between the United States and Cuba, on and after the date of enactment of this Act [Dec. 22, 1987], consular officer[s] of the Department of State and appropriate officers of the Immigration and Naturalization Service shall, in accordance with the procedures applicable to such cases in other countries, process any application for admission to the United States as a refugee from any Cuban national who was imprisoned for political reasons by the Government of Cuba on or after January 1, 1959, without regard to the duration of such imprisonment, except as may be necessary to reassure the orderly process of available applicants.

''(b) PROCESSING OF IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN THIRD COUNTRIES.—Notwithstanding section 212(f) and section 243(d) of the Immigration and Nationality Act [8 U.S.C. 1182(f), 1253(d)], on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State shall

process immigrant visa applications by nationals of Cuba located in third countries on the same basis as immigrant visa applications by nationals of other countries.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'process' means the acceptance and review of applications and the preparation of necessary documents and the making of appropriate determinations with respect to such applications.

''(2) The term 'refugee' has the meaning given such term in section 101(a)(42) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(42)].''

§ 1201a. Repealed. Pub. L. 99–653, § 5(b), formerly § 5(a)(d), Nov. 14, 1986, 100 Stat. 3656, renumbered § 5(b), Pub. L. 100–525, § 8(d)(2), Oct. 24, 1988, 102 Stat. 2617

Section, Pub. L. 85–316, § 8, Sept. 11, 1957, 71 Stat. 641, related to waiver of fingerprinting requirements for nonimmigrant aliens.

EFFECTIVE DATE OF REPEAL

Repeal applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as an Effective Date of 1986 Amendment note under section 1201 of this title.

§ 1202. Application for visas

(a) Immigrant visas

Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(b) Other documentary evidence for immigrant visa

Every alien applying for an immigrant visa shall present 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 Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. All immigrant visa applications shall be reviewed and adjudicated by a consular officer.

(c) Nonimmigrant visas; nonimmigrant registration; form, manner and contents of application

Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; his marital status; and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed. The alien shall provide complete and accurate information in response to any request for information contained in the application. At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 1101(a)(15) of this title may vary according to the class of visa being requested.

(d) Other documentary evidence for nonimmigrant visa

Every alien applying for a nonimmigrant visa and alien registration shall furnish to the consular officer, with his application, a certified copy of such documents pertaining to him as may be by regulations required. All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.

(e) Signing and verification of application

Except as may be otherwise prescribed by regulations, each application for an immigrant visa shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. The application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp, or other[1] placed in the alien's passport.

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—

(1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.[2]

(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may

[1] So in original.

[2] So in original. The period probably should be ''; and''.

provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

(g) Nonimmigrant visa void at conclusion of authorized period of stay

(1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except—

(A) on the basis of a visa (other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or

(B) where extraordinary circumstances are found by the Secretary of State to exist.

(h) In person interview with consular officer

Notwithstanding any other provision of this chapter, the Secretary of State shall require every alien applying for a nonimmigrant visa—

(1) who is at least 14 years of age and not more than 79 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived—

(A) by a consular official and such alien is—

(i) within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 1101(a)(15) of this title;

(ii) within the NATO visa category;

(iii) within that class of nonimmigrants enumerated in section 1101(a)(15)(C)(iii)[3] of this title (referred to as the ''C–3 visa'' category); or

(iv) granted a diplomatic or official visa on a diplomatic or official passport or on the equivalent thereof;

(B) by a consular official and such alien is applying for a visa—

(i) not more than 12 months after the date on which such alien's prior visa expired;

(ii) for the visa classification for which such prior visa was issued;

(iii) from the consular post located in the country of such alien's usual residence, unless otherwise prescribed in regulations that require an applicant to apply for a visa in the country of which such applicant is a national; and

(iv) the consular officer has no indication that such alien has not complied with the immigration laws and regulations of the United States; or

(C) by the Secretary of State if the Secretary determines that such waiver is—

(i) in the national interest of the United States; or

(ii) necessary as a result of unusual or emergent circumstances; and

(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

(A) is not a national or resident of the country in which such alien is applying for a visa;

(B) was previously refused a visa, unless such refusal was overcome or a waiver of ineligibility has been obtained;

(C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);

(D) is a national of a country officially designated by the Secretary of State as a state sponsor of terrorism, except such nationals who possess nationalities of countries that are not designated as state sponsors of terrorism;

(E) requires a security advisory opinion or other Department of State clearance, unless such alien is—

(i) within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 1101(a)(15) of this title;

(ii) within the NATO visa category;

(iii) within that class of nonimmigrants enumerated in section 1101(a)(15)(C)(iii)[3] of this title (referred to as the ''C–3 visa'' category); or

(iv) an alien who qualifies for a diplomatic or official visa, or its equivalent; or

(F) is identified as a member of a group or sector that the Secretary of State determines—

(i) poses a substantial risk of submitting inaccurate information in order to obtain a visa;

(ii) has historically had visa applications denied at a rate that is higher than the average rate of such denials; or

(iii) poses a security threat to the United States.

(June 27, 1952, ch. 477, title II, ch. 3, § 222, 66 Stat. 193; Pub. L. 87–301, § 6, Sept. 26, 1961, 75 Stat. 653; Pub. L. 89–236, § 11(c), Oct. 3, 1965, 79 Stat. 918; Pub. L. 99–653, § 6, Nov. 14, 1986, 100 Stat. 3656; Pub. L. 100–525, §§ 8(e), 9(j), Oct. 24, 1988, 102 Stat. 2617, 2620; Pub. L. 103–416, title II, § 205(a), Oct. 25, 1994, 108 Stat. 4311; Pub. L. 104–208, div. C, title VI, §§ 632(a), 634, Sept. 30, 1996, 110 Stat. 3009–701; Pub. L. 107–56, title IV, § 413, Oct. 26,

[3] So in original. Subpar. (C) of section 1101(a)(15) does not contain clauses.

2001, 115 Stat. 353; Pub. L. 108–458, title V, §§ 5301(a), 5302, title VII, § 7203(b), Dec. 17, 2004, 118 Stat. 3735, 3736, 3814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–458, § 7203(b)(1), inserted at end ''All immigrant visa applications shall be reviewed and adjudicated by a consular officer.''

Subsec. (c). Pub. L. 108–458, § 5302, inserted after second sentence ''The alien shall provide complete and accurate information in response to any request for information contained in the application.''

Subsec. (d). Pub. L. 108–458, § 7203(b)(2), inserted at end ''All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.''

Subsec. (h). Pub. L. 108–458, § 5301(a), added subsec. (h).

2001—Subsec. (f). Pub. L. 107–56 inserted ''—'' after ''except that'' and ''(1)'' before ''in the discretion'', and added par. (2).

1996—Subsec. (c). Pub. L. 104–208, § 634(a), struck out ''personal description (including height, complexion, color of hair and eyes, and marks of identification);'' after ''United States;'', substituted ''applicant, the determination of his eligibility for a nonimmigrant visa,'' for ''applicant'', and inserted at end ''At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 1101(a)(15) of this title may vary according to the class of visa being requested.''

Subsec. (e). Pub. L. 104–208, § 634(b), in first sentence, substituted ''for an immigrant visa'' for ''required by this section'', and in fourth sentence, substituted ''stamp, or other'' for ''stamp'' and struck out ''by the consular officer'' before ''in the alien's passport''.

Subsec. (g). Pub. L. 104–208, § 632(a), added subsec. (g).

1994—Subsec. (a). Pub. L. 103–416, § 205(a), in second sentence substituted ''the alien'' for ''the immigrant'' after ''In the application'' and struck out ''present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section 1151(b) of this title or a preference or special immigrant, the facts on which he bases such claim; whether or not he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws;'' before ''and such additional information''.

1988—Subsec. (a). Pub. L. 100–525, § 9(j), substituted ''whether or not he intends'' for ''whether or not be intends''.

Subsecs. (b), (e). Pub. L. 100–525, § 8(e), made technical correction to Pub. L. 99–653, § 6. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–653, § 6(a), as amended by Pub. L. 100–525, § 8(e)(1), substituted ''a copy of'' for ''two copies of'', ''immigrant; a certified copy of'' for ''immigrant; two certified copies of'', ''and a certified copy of'' for ''and two certified copies of'', ''The copy of each'' for ''One copy of each'', and ''attached to the'' for ''attached to each copy of the''.

Subsec. (e). Pub. L. 99–653, § 6(b), as amended by Pub. L. 100–525, § 8(e)(2), substituted ''each application'' for ''each copy of an application'', ''The application for'' for ''One copy of the application for'', and ''the immigrant visa'' for ''the immigrant visa, and the other copy shall be disposed of as may be by regulations prescribed''.

1965—Subsec. (a). Pub L. 89–236 substituted ''an immediate relative within the meaning of section 1151 (b) of this title or a preference or special immigrant'', for ''preference quota or a nonquota immigrant''.

1961—Subsecs. (a), (c). Pub. L. 87–301 struck out requirement to state applicant's race and ethnic classification.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title V, § 5303, Dec. 17, 2004, 118 Stat. 3736, provided that: ''Notwithstanding section 1086 [Pub. L. 108–458 does not contain a section 1086] or any other provision of this Act [see Tables for classification], sections 5301 and 5302 [amending this section] shall take effect 90 days after the date of enactment of this Act [Dec. 17, 2004].''

Pub. L. 108–458, title VII, § 7219, Dec. 17, 2004, 118 Stat. 3835, provided that: ''Notwithstanding any other provision of this Act [see Tables for classification], this subtitle [subtitle B (§§ 7201–7220) of title VII of Pub. L. 108–458, see Tables for classification] shall take effect on the date of enactment of this Act [Dec. 17, 2004].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 632(b) of div. C of Pub. L. 104–208 provided that:

''(1) VISAS.—Section 222(g)(1) of the Immigration and Nationality Act [8 U.S.C. 1202(g)(1)], as added by subsection (a), shall apply to a visa issued before, on, or after the date of the enactment of this Act [Sept. 30, 1996].

''(2) ALIENS SEEKING READMISSION.—Section 222(g)(2) of the Immigration and Nationality Act, as added by subsection (a), shall apply to any alien applying for readmission to the United States after the date of the enactment of this Act, except an alien applying for readmission on the basis on a visa that—

''(A) was issued before such date; and

''(B) is not void through the application of section 222(g)(1) of the Immigration and Nationality Act, as added by subsection (a).''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(b) of Pub. L. 103–416 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to applications made on or after the date of the enactment of this Act [Oct. 25, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(e) 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 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 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.

SHARING OF CERTAIN INFORMATION

Pub. L. 109–162, title VIII, § 834, Jan. 5, 2006, 119 Stat. 3077, provided that: ''Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) shall not be construed to prevent the sharing of information regarding a United States petitioner for a visa under clause (i) or (ii) of section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)) for the limited purposes of fulfilling disclosure obligations imposed by the amendments made by section 832(a) [amending section 1184 of this title] or by section 833 [enacting section 1375a of this title], including reporting obligations of the Comptroller General of the United States under section 833(f).''

§ 1203. Reentry permit

(a) Application; contents

(1) Any alien lawfully admitted for permanent residence, or (2) any alien lawfully admitted to the United States pursuant to clause 6 of section 3 of the Immigration Act of 1924, between July 1, 1924, and July 5, 1932, both dates inclusive, who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States, stating the length of his intended absence or absences, and the reasons therefor. Such applications shall be made under oath, and shall be in such form, contain such information, and be accompanied by such photographs of the applicant as may be by regulations prescribed.

(b) Issuance of permit; nonrenewability

If the Attorney General finds (1) that the applicant under subsection (a)(1) of this section has been lawfully admitted to the United States for permanent residence, or that the applicant under subsection (a)(2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than two years from the date of issuance and shall not be renewable. The permit shall be in such form as shall be by regulations prescribed for the complete identification of the alien.

(c) Multiple reentries

During the period of validity, such permit may be used by the alien in making one or more applications for reentry into the United States.

(d) Presented and surrendered

Upon the return of the alien to the United States the permit shall be presented to the immigration officer at the port of entry, and upon the expiration of its validity, the permit shall be surrendered to the Service.

(e) Permit in lieu of visa

A permit issued under this section in the possession of the person to whom issued, shall be accepted in lieu of any visa which otherwise would be required from such person under this chapter. Otherwise a permit issued under this section shall have no effect under the immigration laws except to show that the alien to whom it was issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

(June 27, 1952, ch. 477, title II, ch. 3, § 223, 66 Stat. 194; Pub. L. 97–116, § 6, Dec. 29, 1981, 95 Stat. 1615.)

REFERENCES IN TEXT

Clause (6) of section 3 of the Immigration Act of 1924, referred to in subsec. (a), which was classified to section 203(6) of this title, was repealed by section 403(a)(2) of act June 27, 1952. See section 1101(a)(15)(E) of this title.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–116 substituted ''two years from the date of issuance and shall not be renewable'' for ''one year from the date of issuance: *Provided*, That the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate''.

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.

§ 1204. Immediate relative and special immigrant visas

A consular officer may, subject to the limitations provided in section 1201 of this title, issue an immigrant visa to a special immigrant or immediate relative as such upon satisfactory proof, under regulations prescribed under this chapter, that the applicant is entitled to special immigrant or immediate relative status.

(June 27, 1952, ch. 477, title II, ch. 3, § 224, 66 Stat. 195; Pub. L. 89–236, § 11(d), Oct. 3, 1965, 79 Stat. 918.)

AMENDMENTS

1965—Pub. L. 89–236 struck out reference to sections 1154 and 1155 of this title and substituted ''special immigrant or immediate relative'' for ''nonquota immigrant''.

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.

§ 1205. Repealed. Pub. L. 87–301, § 24(a)(2), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85–316, § 4, Sept. 11, 1957, 71 Stat. 639; Pub. L. 86–253, § 2, Sept. 9, 1959, 73 Stat. 490; Pub. L. 86–648, § 7, July 14, 1960, 74 Stat. 505, related to nonquota immigrant visas for eligible orphans.

PART IV—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

§ 1221. Lists of alien and citizen passengers arriving and departing

(a) Arrival manifests

For each commercial vessel or aircraft transporting any person to any seaport or airport of the United States from any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) of this section to provide to any United States border officer (as defined in subsection (i) of this section) at that port manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port.

(b) Departure manifests

For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) of this section to provide any United States border officer (as defined in subsection (i) of this section) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

(c) Contents of manifest

The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) of this section shall include—

(1) complete name;

(2) date of birth;

(3) citizenship;

(4) sex;

(5) passport number and country of issuance;

(6) country of residence;

(7) United States visa number, date, and place of issuance, where applicable;

(8) alien registration number, where applicable;

(9) United States address while in the United States; and

(10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) Appropriate officials specified

An appropriate official specified in this subsection is the master or commanding officer, or authorized agent, owner, or consignee, of the commercial vessel or aircraft concerned.

(e) Deadline for requirement of electronic transmission of manifest information

Not later than January 1, 2003, manifest information required to be provided under subsection (a) or (b) of this section shall be transmitted electronically by the appropriate official specified in subsection (d) of this section to an immigration officer.

(f) Prohibition

No operator of any private or public carrier that is under a duty to provide manifest information under this section shall be granted clearance papers until the appropriate official specified in subsection (d) of this section has complied with the requirements of this subsection, except that, in the case of commercial vessels or aircraft that the Attorney General determines are making regular trips to the United States, the Attorney General may, when expedient, arrange for the provision of manifest information of persons departing the United States at a later date.

(g) Penalties against noncomplying shipments, aircraft, or carriers

If it shall appear to the satisfaction of the Attorney General that an appropriate official specified in subsection (d) of this section, any public or private carrier, or the agent of any transportation line, as the case may be, has refused or failed to provide manifest information required by subsection (a) or (b) of this section, or that the manifest information provided is not accurate and full based on information provided to the carrier, such official, carrier, or agent, as the case may be, shall pay to the Commissioner the sum of $1,000 for each person with respect to whom such accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed by this section or by regulations issued pursuant thereto. No commercial vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the Commissioner of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(h) Waiver

The Attorney General may waive the requirements of subsection (a) or (b) of this section upon such circumstances and conditions as the Attorney General may by regulation prescribe.

(i) United States border officer defined

In this section, the term ''United States border officer'' means, with respect to a particular port of entry into the United States, any United States official who is performing duties at that port of entry.

(j) Record of citizens and resident aliens leaving permanently for foreign countries

The Attorney General may authorize immigration officers to record the following information regarding every resident person leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Names, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen or national, the facts on which claim to that status is based.

(June 27, 1952, ch. 477, title II, ch. 4, § 231, 66 Stat. 195; Pub. L. 97–116, § 18(g), Dec. 29, 1981, 95 Stat.

1620; Pub. L. 101–649, title V, § 543(a)(1), Nov. 29, 1990, 104 Stat. 5057; Pub. L. 102–232, title III, § 306(c)(4)(A), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104–208, div. C, title III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622; Pub. L. 107–77, title I, § 115, Nov. 28, 2001, 115 Stat. 768; Pub. L. 107–173, title IV, § 402(a), May 14, 2002, 116 Stat. 557.)

AMENDMENTS

2002—Pub. L. 107–173 added subsecs. (a) to (i), redesignated former subsec. (c) as (j), and struck out former subsecs. (a), (b), (d), and (e), which related to shipment or aircraft manifest, arrival, form and contents, exclusions in subsec. (a), departure, shipment or aircraft manifest, form and contents, and exclusions in subsec. (b), penalties against noncomplying shipments or aircraft in subsec. (d), and waiver of requirements in subsec. (e).

2001—Subsec. (a). Pub. L. 107–77, § 115(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: ''Upon the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any such person on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests of the persons on board such vessel or aircraft. Such lists or manifests shall be prepared at such time, be in such form and shall contain such information as the Attorney General shall prescribe by regulation as being necessary for the identification of the persons transported and for the enforcement of the immigration laws. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person arriving by air on a trip originating in foreign contiguous territory, except (with respect to such arrivals by air) as may be required by regulations issued pursuant to section 1224 of this title.''

Subsec. (b). Pub. L. 107–77, § 115(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''It shall be the duty of the master or commanding officer or authorized agent of every vessel or aircraft taking passengers on board at any port of the United States, who are destined to any place outside the United States, to file with the immigration officers before departure from such port a list of all such persons taken on board. Such list shall be in such form, contain such information, and be accompanied by such documents, as the Attorney General shall prescribe by regulation as necessary for the identification of the persons so transported and for the enforcement of the immigration laws. No master or commanding officer of any such vessel or aircraft shall be granted clearance papers for his vessel or aircraft until he or the authorized agent has deposited such list or lists and accompanying documents with the immigration officer at such port and made oath that they are full and complete as to the information required to be contained therein, except that in the case of vessels or aircraft which the Attorney General determines are making regular trips to ports of the United States, the Attorney General may, when expedient, arrange for the delivery of lists of outgoing persons at a later date. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person departing by air on a trip originating in the United States who is destined to foreign contiguous territory, except (with respect to such departure by air) as may be required by regulations issued pursuant to section 1224 of this title.''

Subsec. (d). Pub. L. 107–77, § 115(c), directed amendment of heading by substituting ''shipments, aircraft or carriers'' for ''shipments or aircraft'' and, in text inserted '', any public or private carrier,'' after ''or aircraft,'' in first sentence and substituted ''vessel, aircraft, train or bus'' for ''vessel or aircraft'' in second sentence.

1996—Subsecs. (a), (b). Pub. L. 104–208 substituted ''section 1224'' for ''section 1229''.

1991—Subsec. (d). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' after ''deposit with the''.

1990—Subsec. (d). Pub. L. 101–649 substituted ''Commissioner the sum of $300'' for ''collector of customs at the port of arrival or departure the sum of $10''.

1981—Subsec. (d). Pub. L. 97–116 substituted ''subsection'' for ''subsections''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–173, title IV, § 402(c), May 14, 2002, 116 Stat. 559, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of this Act [May 14, 2002].''

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 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

Section 543(c) of Pub. L. 101–649 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1227, 1229, 1282, 1284 to 1287, 1321 to 1323, and 1325 to 1328 of this title] shall apply to actions taken after the date of the enactment of this Act [Nov. 29, 1990].''

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.

EXTENSION TO LAND CARRIERS

Pub. L. 107–173, title IV, § 402(b), May 14, 2002, 116 Stat. 559, provided that:

''(1) STUDY.—The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

''(2) REPORT.—Not later than two years after the date of enactment of this Act [May 14, 2002], the President shall submit to Congress a report setting forth the findings of the study conducted under paragraph (1).''

§ 1222. Detention of aliens for physical and mental examination

(a) Detention of aliens

For the purpose of determining whether aliens (including alien crewmen) arriving at ports of

the United States belong to any of the classes inadmissible under this chapter, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities set forth in section 1182(a) of this title, or whenever the Attorney General has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic, such aliens shall be detained by the Attorney General for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to inadmissible classes.

(b) Physical and mental examination

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the immigration judges, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be inadmissible under paragraph (1) of section 1182(a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraph (1) of section 1182(a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(c) Certification of certain helpless aliens

If an examining medical officer determines that an alien arriving in the United States is inadmissible, is helpless from sickness, mental or physical disability, or infancy, and is accompanied by another alien whose protection or guardianship may be required, the officer may certify such fact for purposes of applying section 1182(a)(10)(B) of this title with respect to the other alien.

(June 27, 1952, ch. 477, title II, ch. 4, § 232, 66 Stat. 196; Pub. L. 99–500, § 101(b) [title II, § 206(a), formerly § 206], Oct. 18, 1986, 100 Stat. 1783–39, 1783–56, renumbered § 206(a), Pub. L. 100–525, § 4(b)(1), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 99–591, § 101(b) [title II, § 206], Oct. 30, 1986, 100 Stat. 3341–39, 3341–56; Pub. L. 100–525, § 4(b)(2), (d), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 104–208, div. C, title III, §§ 308(b)(2), (3)(C), (c)(2)(A), (d)(4)(H), Sept. 30, 1996, 110 Stat. 3009–615, 3009–616, 3009–618.)

CODIFICATION

The text of section 1224 of this title, which was transferred to subsec. (b) of this section by Pub. L. 104–208, § 308(b)(3)(C), was based on acts June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198; Oct. 24, 1988, Pub. L. 100–525, § 9(k), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(10), 104 Stat. 5083; Sept. 30, 1996, Pub. L. 104–208, div. C, title III, §§ 308(b)(3)(A), (B), (d)(3)(A), 371(b)(3), 110 Stat. 3009–615, 3009–617, 3009–645.

AMENDMENTS

1996—Pub. L. 104–208, § 308(b)(2)(B), amended section catchline generally.

Pub. L. 104–208, § 308(b)(2)(A), inserted "(a) Detention of aliens" before "For the purpose of".

Subsec. (a). Pub. L. 104–208, § 308(d)(4)(H), substituted "inadmissible under" for "excluded by" and "inadmissible classes" for "the excluded classes".

Subsec. (b). Pub. L. 104–208, § 308(b)(3)(C), transferred section 1224 of this title to subsec. (b) of this section. See Codification note above.

Subsec. (c). Pub. L. 104–208, § 308(c)(2)(A), added subsec. (c).

1988—Pub. L. 100–525, § 4(b)(1), (2), amended Pub. L. 99–500 and 99–591. See 1986 Amendment note below.

1986—Pub. L. 99–500, § 101(b) [title II, § 206(a), formerly § 206], as redesignated and amended by Pub. L. 100–525, § 4(b)(1), (2), substituted "by the Attorney General" for "on board the vessel or at the airport of arrival of the aircraft bringing them, unless the Attorney General directs their detention in a United States immigration station or other place specified by him at the expense of such vessel or aircraft except as otherwise provided in this chapter, as circumstances may require or justify,".

Pub. L. 99–591, § 101(b) [title II, § 206], a corrected version of Pub. L. 99–500, § 101(b) [title II, § 206(a)], was repealed by Pub. L. 100–525, § 4(d), effective as of Oct. 30, 1986.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(b)(2), (3)(C), (c)(2)(A), (d)(4)(H) 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 1988 AMENDMENT

Section 4(c) of Pub. L. 100–525 provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 1223, 1227, and 1356 of this title and enacting provisions set out as a note under section 1356 of this title] shall be effective as if they were included in the enactment of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99–500)."

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.

DESIGNATION OF UNITED STATES MILITARY PHYSICIANS AS CIVIL SURGEONS

Pub. L. 102–484, div. A, title X, § 1079, Oct. 23, 1992, 106 Stat. 2514, as amended by Pub. L. 104–208, div. C, title

III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622, provided that: ''Notwithstanding any other provision of law, United States military physicians with not less than four years professional experience shall be considered to be civil surgeons for the purpose of the performance of physical examinations required under section 232(b) of the Immigration and Nationality Act (8 U.S.C. 1224 [8 U.S.C. 1222(b)]) of special immigrants described in section 101(a)(27)(K) of such Act (8 U.S.C. 1101(a)(27)(K)).''

§ 1223. Entry through or from foreign territory and adjacent islands

(a) Necessity of transportation contract

The Attorney General shall have power to enter into contracts with transportation lines for the inspection and admission of aliens coming to the United States from foreign territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered into any such contracts which may be required by the Attorney General.

(b) Landing stations

Every transportation line engaged in carrying alien passengers for hire to the United States from foreign territory or from adjacent islands shall provide and maintain at its expense suitable landing stations, approved by the Attorney General, conveniently located at the point or points of entry. No such transportation line shall be allowed to land any alien passengers in the United States until such landing stations are provided, and unless such stations are thereafter maintained to the satisfaction of the Attorney General.

(c) Landing agreements

The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this chapter, such aliens may not have their classification changed under section 1258 of this title.

(d) Definitions

As used in this section the terms ''transportation line'' and ''transportation company'' include, but are not limited to, the owner, charterer, consignee, or authorized agent operating any vessel or aircraft or railroad train bringing aliens to the United States, to foreign territory, or to adjacent islands.

(June 27, 1952, ch. 477, title II, ch. 4, § 233, formerly § 238, 66 Stat. 202; Pub. L. 99–653, § 7(b), Nov. 14, 1986, 100 Stat. 3657; renumbered § 233 and amended Pub. L. 104–208, div. C, title III, §§ 308(b)(4), (f)(4), 362, Sept. 30, 1996, 110 Stat. 3009–615, 3009–622, 3009–645.)

CODIFICATION

Section was formerly classified to section 1228 of this title prior to renumbering by Pub. L. 104–208.

PRIOR PROVISIONS

A prior section 1223, act June 27, 1952, ch. 477, title II, ch. 4, § 233, 66 Stat. 197, related to examinations of aliens upon arrival in the United States, prior to repeal by Pub. L. 99–500, § 101(b) [title II, § 206(a), formerly § 206], Oct. 18, 1986, 100 Stat. 1783–39, 1783–56; renumbered § 206(a) and amended Pub. L. 100–525, § 4(b)(1), (3), Oct. 24, 1988, 102 Stat. 2615.

AMENDMENTS

1996—Pub. L. 104–208, § 362(a)(1), amended section catchline.

Subsec. (a). Pub. L. 104–208, § 362(a)(2), struck out ''contiguous'' after ''foreign''.

Pub. L. 104–208, § 308(f)(4), substituted ''inspection and admission'' for ''entry and inspection''.

Subsec. (b). Pub. L. 104–208, § 362(a)(2), struck out ''contiguous'' after ''foreign''.

Subsec. (d). Pub. L. 104–208, § 362(b), inserted ''or railroad train'' after ''aircraft''.

Pub. L. 104–208, § 362(a)(2), struck out ''contiguous'' after ''foreign''.

1986—Pub. L. 99–653 struck out subsec. (a) which authorized the Attorney General to enter into contracts with transportation lines for the entry and inspection of aliens and to prescribe regulations, and redesignated subsecs. (b) to (e) as (a) to (d), respectively.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(b)(4), (f)(4) 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 1986 AMENDMENT

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.

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.

§ 1224. Designation of ports of entry for aliens arriving by aircraft

The Attorney General is authorized (1) by regulation to designate as ports of entry for aliens arriving by aircraft any of the ports of entry for civil aircraft designated as such in accordance with law; (2) by regulation to provide such reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing, or notice of landing, as shall be deemed necessary for purposes of administration and enforcement of this chapter; and (3) by regulation to provide for the application to civil air navigation of the provisions of this chapter where not expressly so provided in this chapter to such extent and upon such conditions as he deems necessary. Any person who violates any regulation made under this section shall be subject to a civil penalty of $2,000 which may be remitted or mitigated by the Attorney General in accordance with such proceedings as the Attorney General shall by regulation prescribe. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft, and such aircraft may be libeled therefore in the appropriate United States court. The determination by the Attorney General and remission or mitigation of the civil penalty shall be final. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a

lien upon the aircraft and may be collected by proceedings in rem which shall conform as nearly as may be to civil suits in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings against aircraft in any particular not otherwise provided by law. Any aircraft made subject to a lien by this section may be summarily seized by, and placed in the custody of such persons as the Attorney General may by regulation prescribe. The aircraft may be released from such custody upon deposit of such amount not exceeding $2,000 as the Attorney General may prescribe, or of a bond in such sum and with such sureties as the Attorney General may prescribe, conditioned upon the payment of the penalty which may be finally determined by the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 4, § 234, formerly § 239, 66 Stat. 203; Pub. L. 101–649, title V, § 543(a)(3), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 102–232, title III, § 306(c)(2), Dec. 12, 1991, 105 Stat. 1752; renumbered § 234, Pub. L. 104–208, div. C, title III, § 304(a)(1), Sept. 30, 1996, 110 Stat. 3009–587.)

CODIFICATION

Section was formerly classified to section 1229 of this title prior to renumbering by Pub. L. 104–208.

PRIOR PROVISIONS

A prior section 1224, act June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198, as amended, which related to physical and mental examinations, was renumbered section 232(b) of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 308(b)(3), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1222(b) of this title.

AMENDMENTS

1991—Pub. L. 102–232 made technical correction to directory language of Pub. L. 101–649. See 1990 Amendment note below.

1990—Pub. L. 101–649, as amended by Pub. L. 102–232, substituted ''$2,000'' for ''$500'' in two places.

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 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted 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) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B) of this section. A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B) of this section. In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriv-

ing in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term ''credible fear of persecution'' means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have ju-

risdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term ''asylum officer'' means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by sub-

poena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198; Pub. L. 101–649, title VI, § 603(a)(11), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104–132, title IV, §§ 422(a), 423(b), Apr. 24, 1996, 110 Stat. 1270, 1272; Pub. L. 104–208, div. C, title III, §§ 302(a), 308(d)(5), 371(b)(4), Sept. 30, 1996, 110 Stat. 3009–579, 3009–619, 3009–645.)

AMENDMENTS

1996—Pub. L. 104–208, § 302(a), amended section generally, revising and restating former subsecs. (a) to (d) relating to inspection of aliens arriving in the United States, powers of immigration officers, detention of aliens for further inquiry, temporary and permanent exclusion of aliens, and collateral attacks on orders of exclusion and deportation.

Pub. L. 104–208, § 371(b)(4), substituted ''an immigration judge'' for ''a special inquiry officer'', ''immigration judge'' for ''special inquiry officer'', and ''immigration judges'' for ''special inquiry officers'', wherever appearing in subsecs. (a) to (c).

Subsec. (b). Pub. L. 104–132, § 422(a), which directed the general amendment of subsec. (b) by substituting pars. (1) to (3) relating to asylum interviews and hearings, detention for further inquiry, and challenges of favorable decisions, for former subsec. (b) consisting of single par., was repealed by Pub. L. 104–208, § 308(d)(5). See Construction of 1996 Amendment note below.

Subsec. (d). Pub. L. 104–132, § 423(b), added subsec. (d) which read as follows: ''In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 1325 or section 1326 of this title, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 1226 and 1252 of this title.''

1990—Subsec. (c). Pub. L. 101–649 substituted ''subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title'' for ''paragraph (27), (28), or (29) of section 1182(a) of this title''.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 302(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.

Section 308(d)(5) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective as of Apr. 24, 1996. See Construction of 1996 Amendment note below.

Amendment by section 371(b)(4) 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.

Section 422(c) of Pub. L. 104–132, which provided that the amendments made by section 422 of Pub. L. 104–132 [amending this section and former section 1227 of this title] were to take effect on the first day of the first month that began more than 180 days after Apr. 24, 1996, was repealed by Pub. L. 104–208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009–619. See Construction of 1996 Amendment note below.

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.

CONSTRUCTION OF 1996 AMENDMENT

Section 308(d)(5) of div. C of Pub. L. 104–208 provided that: ''Effective as of the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104–132, approved Apr. 24, 1996], section 422 of such Act [amending this section and section 1227 of this title, and enacting provisions set out as a note above] is repealed and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.''

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 ON OPERATION OF EXPEDITED REMOVAL PROCEDURES

Section 302(b) of div. C of Pub. L. 104–208 provided that:

''(1) STUDY.—The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1225(b)(1)], as amended by subsection (a). The study shall examine—

''(A) the effectiveness of such procedures in deterring illegal entry,

''(B) the detention and adjudication resources saved as a result of the procedures,

''(C) the administrative and other costs expended to comply with the provision,

''(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

''(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.

''(2) REPORT.—By not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996], the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1).''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

(1) NEW STATIONS.—Subject to paragraph (5), not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain pre-

inspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established prior to September 30, 1996.

(2) REPORT.—Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and of the Senate on the implementation of paragraph (1).

(3) DATA COLLECTION.—Not later than November 1, 1997, and each subsequent November 1, the Attorney General shall compile data identifying—

(A) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal years;

(B) the number and nationality of such aliens arriving from each such foreign airport; and

(C) the primary routes such aliens followed from their country of origin to the United States.

(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).

(5) CONDITIONS.—Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection;

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967), or that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) Establishment of carrier consultant program and immigration security initiative

The Secretary of Homeland Security shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained pursuant to subsection (a)(3) of this section, served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists. Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.

(June 27, 1952, ch. 477, title II, ch. 4, § 235A, as added Pub. L. 104–208, div. C, title I, § 123(a), Sept. 30, 1996, 110 Stat. 3009–560; amended Pub. L. 108–458, title VII, §§ 7206(a), 7210(d)(1), Dec. 17, 2004, 118 Stat. 3817, 3825.)

CODIFICATION

September 30, 1996, referred to in subsec. (a)(1), was in the original ''the date of the enactment of such Act'', which was translated as meaning the date of enactment of Pub. L. 104–208, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–458, § 7210(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''(4) ADDITIONAL STATIONS.—Subject to paragraph (5), not later than October 31, 2000, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).''

Subsec. (b). Pub. L. 108–458, § 7206(a), inserted ''and immigration security initiative'' after ''program'' in heading, substituted ''Secretary of Homeland Security'' for ''Attorney General'' in text, and inserted at end ''Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.''

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.

EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS

Pub. L. 108–458, title VII, § 7210(a), (b), Dec. 17, 2004, 118 Stat. 3824, provided that:

''(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

''(1) The exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits.

''(2) The further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Federal Government should exchange terrorist information with trusted allies;

''(2) the Federal Government should move toward real-time verification of passports with issuing authorities;

''(3) where practicable, the Federal Government should conduct screening before a passenger departs on a flight destined for the United States;

''(4) the Federal Government should work with other countries to ensure effective inspection regimes at all airports;

''(5) the Federal Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

''(6) the Department of Homeland Security, in coordination with the Department of State and other Federal agencies, should implement the initiatives called for in this subsection.''

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an ''employment authorized'' endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

[1] So in original. Probably should be ''sentenced''.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

(June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200; Pub. L. 101–649, title V, § 504(b), title VI, § 603(a)(12), Nov. 29, 1990, 104 Stat. 5050, 5083; Pub. L. 102–232, title III, § 306(a)(5), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104–208, div. C, title III, §§ 303(a), 371(b)(5), Sept. 30, 1996, 110 Stat. 3009–585, 3009–645.)

AMENDMENTS

1996—Pub. L. 104–208, § 303(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) related to proceedings to determine whether aliens detained under section 1225 of this title should be allowed to enter or should be excluded and deported.

Subsecs. (a) to (d). Pub. L. 104–208, § 371(b)(5), substituted ''An immigration judge'' for ''A special inquiry officer'', ''an immigration judge'' for ''a special inquiry officer'', and ''immigration judge'' for ''special inquiry officer'', wherever appearing.

1991—Subsec. (e)(1). Pub. L. 102–232 substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction''.

1990—Subsec. (d). Pub. L. 101–649, § 603(a)(12), substituted ''has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of section 1182(a) of this title'' for ''is afflicted with a disease specified in section 1182(a)(6) of this title, or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1) to (4) or (5) of section 1182(a) of this title'' and struck out at end ''If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 1182(a)(6) of this title, the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 1183 of this title may be invoked.''

Subsec. (e). Pub. L. 101–649, § 504(b), added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 303(b) of subtitle A of title III of div. C of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall become effective on the title III–A effective date [see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title].

''(2) NOTIFICATION REGARDING CUSTODY.—If the Attorney General, not later than 10 days after the date of the enactment of this Act [Sept. 30, 1996], notifies in writing the Committees on the Judiciary of the House of Representatives and the Senate that there is insufficient detention space and Immigration and Naturalization Service personnel available to carry out section 236(c) of the Immigration and Nationality Act [8 U.S.C. 1226(c)], as amended by subsection (a), or the amendments made by section 440(c) of Public Law 104–132 [amending section 1252 of this title], the provisions in paragraph (3) shall be in effect for a 1-year period beginning on the date of such notification, instead of such section or such amendments. [The Attorney General so notified the committees on Oct. 9, 1996.] The Attorney General may extend such 1-year period for an additional year if the Attorney General provides the same notice not later than 10 days before the end of the first 1-year period. After the end of such 1-year or 2-year periods, the provisions of such section 236(c) shall apply to individuals released after such periods.

''(3) TRANSITION PERIOD CUSTODY RULES.—

''(A) IN GENERAL.—During the period in which this paragraph is in effect pursuant to paragraph (2), the Attorney General shall take into custody any alien who—

''(i) has been convicted of an aggravated felony (as defined under section 101(a)(43) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(43)], as amended by section 321 of this division),

''(ii) is inadmissible by reason of having committed any offense covered in section 212(a)(2) of such Act [8 U.S.C. 1182(a)(2)],

''(iii) is deportable by reason of having committed any offense covered in section 241(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of such Act [former 8 U.S.C. 1251(a)(2)(A)(ii), (A)(iii), (B), (C), (D)] (before redesignation under this subtitle), or

''(iv) is inadmissible under section 212(a)(3)(B) of such Act or deportable under section 241(a)(4)(B) of such Act (before redesignation under this subtitle),

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

''(B) RELEASE.—The Attorney General may release the alien only if the alien is an alien described in subparagraph (A)(ii) or (A)(iii) and—

''(i) the alien was lawfully admitted to the United States and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding, or

''(ii) the alien was not lawfully admitted to the United States, cannot be removed because the designated country of removal will not accept the alien, and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.''

Amendment by section 371(b)(5) 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

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 section 603(a)(12) 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.

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.

IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT

Pub. L. 105–141, Dec. 5, 1997, 111 Stat. 2647, provided that:

''SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT.

''(a) ESTABLISHMENT OF PROGRAM.—Not later than 6 months after the date of the enactment of this Act [Dec. 5, 1997], and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

''(1) Aliens unlawfully present in the United States.

''(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2), (4)] (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

''(b) DESCRIPTION OF PROGRAM.—The program authorized by subsection (a) shall include—

''(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

''(2) provision of funds sufficient to provide for—

''(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

''(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

''(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service's intention to remove the alien from the United States.

''(c) SELECTION OF FACILITIES.—

''(1) IN GENERAL.—The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

''(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

''(B) Such government has submitted a request for such selection to the Attorney General.

''(C) The facility is located—

''(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

''(ii) in a city, town, or other analogous local political subdivision, that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a county).

''(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

''(2) NUMBER OF QUALIFYING SUBDIVISIONS.—For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

''(A) For fiscal year 1999, not less than 10 and not more than 25.

''(B) For fiscal year 2000, not less than 25 and not more than 50.

''(C) For fiscal year 2001, not more than 75.

''(D) For fiscal year 2002, not more than 100.

''(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

''(3) FACILITIES IN INTERIOR STATES.—For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

''(4) TREATMENT OF CERTAIN FACILITIES.—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

''SEC. 2. STUDY AND REPORT.

''Not later than 1 year after the date of the enactment of this Act [Dec. 5, 1997], the Attorney General shall complete a study, and submit a report to the Congress, concerning the logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through—

''(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

''(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.''

CRIMINAL ALIEN TRACKING CENTER

Section 130002 of Pub. L. 103–322, as amended by Pub. L. 104–132, title IV, § 432, Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104–208, div. C, title III, §§ 308(g)(5)(B), 326, 327, Sept. 30, 1996, 110 Stat. 3009–623, 3009–630, provided that:

''(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 236(d) of the Immigration and Nationality Act [8 U.S.C. 1226(d)] operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to removal by reason of their conviction of aggravated felonies, subject to prosecution under section 275 of such Act [8 U.S.C. 1325], not lawfully present in the United States, or otherwise removable. Such system shall include providing for recording of fingerprint records of aliens who have been previously arrested and removed into appropriate automated fingerprint identification systems.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $3,400,000 for fiscal year 1996; and

''(2) $5,000,000 for each of fiscal years 1997 through 2001.''

§ 1226a. Mandatory detention of suspected terrorists; habeas corpus; judicial review

(a) Detention of terrorist aliens

(1) Custody

The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) Release

Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) Certification

The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

(A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), 1227(a)(4)(A)(i), 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) Nondelegation

The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) Commencement of proceedings

The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not

satisfied, the Attorney General shall release the alien.

(6) Limitation on indefinite detention

An alien detained solely under paragraph (1) who has not been removed under section 1231(a)(1)(A) of this title, and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

(7) Review of certification

The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General's discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

(b) Habeas corpus and judicial review

(1) In general

Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6) of this section) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

(2) Application

(A) In general

Notwithstanding any other provision of law, including section 2241(a) of title 28, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with—

(i) the Supreme Court;

(ii) any justice of the Supreme Court;

(iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or

(iv) any district court otherwise having jurisdiction to entertain it.

(B) Application transfer

Section 2241(b) of title 28 shall apply to an application for a writ of habeas corpus described in subparagraph (A).

(3) Appeals

Notwithstanding any other provision of law, including section 2253 of title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

(4) Rule of decision

The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in habeas corpus proceedings described in paragraph (1).

(c) Statutory construction

The provisions of this section shall not be applicable to any other provision of this chapter.

(June 27, 1952, ch. 477, title II, ch. 4, § 236A, as added Pub. L. 107–56, title IV, § 412(a), Oct. 26, 2001, 115 Stat. 350.)

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.

REPORTS

Pub. L. 107–56, title IV, § 412(c), Oct. 26, 2001, 115 Stat. 352, provided that: ''Not later than 6 months after the date of the enactment of this Act [Oct. 26, 2001], and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

''(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1226a(a)(3)], as added by subsection (a);

''(2) the grounds for such certifications;

''(3) the nationalities of the aliens so certified;

''(4) the length of the detention for each alien so certified; and

''(5) the number of aliens so certified who—

''(A) were granted any form of relief from removal;

''(B) were removed;

''(C) the Attorney General has determined are no longer aliens who may be so certified; or

''(D) were released from detention.''

§ 1227. Deportable aliens

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status

(A) Inadmissible aliens

Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.

(C) Violated nonimmigrant status or condition of entry

(i) Nonimmigrant status violators

Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the

alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry

Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence

(i) In general

Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this title (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship waivers).

(E) Smuggling

(i) In general

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Repealed. Pub. L. 104–208, div. C, title VI, § 671(d)(1)(C), Sept. 30, 1996, 110 Stat. 3009–723

(G) Marriage fraud

An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 1182(a)(6)(C)(i) of this title) and to be in the United States in violation of this chapter (within the meaning of subparagraph (B)) if—

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five

years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of section 758 of title 18 (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Failure to register as a sex offender

Any alien who is convicted under section 2250 of title 18 is deportable.

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title,

is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term ''crime of domestic violence'' means any crime of violence (as defined in section 16 of title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term ''protection order'' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(3) Failure to register and falsification of documents

(A) Change of address

An alien who has failed to comply with the provisions of section 1305 of this title is de-

portable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) Failure to register or falsification of documents

Any alien who at any time has been convicted—

(i) under section 1306(c) of this title or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) Document fraud

(i) In general

An alien who is the subject of a final order for violation of section 1324c of this title is deportable.

(ii) Waiver authorized

The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) Falsely claiming citizenship

(i) In general

Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any Federal or State law is deportable.

(ii) Exception

In the case of an alien making a representation described in clause (i), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such representation.

(4) Security and related grounds

(A) In general

Any alien who has engaged, is engaged, or at any time after admission engages in—

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) Terrorist activities

Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.

(C) Foreign policy

(i) In general

An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) Exceptions

The exceptions described in clauses (ii) and (iii) of section 1182(a)(3)(C) of this title shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 1182(a)(3)(C)(i) of this title.

(D) Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Any alien described in clause (i), (ii), or (iii) of section 1182(a)(3)(E) of this title is deportable.

(E) Participated in the commission of severe violations of religious freedom

Any alien described in section 1182(a)(2)(G) of this title is deportable.

(5) Public charge

Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

(6) Unlawful voters

(A) In general

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.

(B) Exception

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall

not be considered to be deportable under any provision of this subsection based on such violation.

(7) Waiver for victims of domestic violence

(A) In general

The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

(i) upon a determination that—

(I) the alien was acting is[1] self-defense;

(II) the alien was found to have violated a protection order intended to protect the alien; or

(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime—

(aa) that did not result in serious bodily injury; and

(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

(B) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. 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.

(b) Deportation of certain nonimmigrants

An alien, admitted as a nonimmigrant under the provision of either section 1101(a)(15)(A)(i) or 1101(a)(15)(G)(i) of this title, and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a) of this section.

(c) Waiver of grounds for deportation

Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) of this section (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the alien was provided such special immigrant status.

(June 27, 1952, ch. 477, title II, ch. 4, § 237, formerly ch. 5, § 241, 66 Stat. 204; July 18, 1956, ch. 629, title III, § 301(b), (c), 70 Stat. 575; Pub. L. 86–648, § 9, July 14, 1960, 74 Stat. 505; Pub. L. 87–301, § 16, Sept. 26, 1961, 75 Stat. 655; Pub. L. 89–236, § 11(e), Oct. 3, 1965, 79 Stat. 918; Pub. L. 94–571, § 7(e), Oct. 20, 1976, 90 Stat. 2706; Pub. L. 95–549, title I, § 103, Oct. 30, 1978, 92 Stat. 2065; Pub. L. 97–116, § 8, Dec. 29, 1981, 95 Stat. 1616; Pub. L. 99–570, title I, § 1751(b), Oct. 27, 1986, 100 Stat. 3207–47; Pub. L. 99–603, title III, § 303(b), Nov. 6, 1986, 100 Stat. 3431; Pub. L. 99–639, § 2(b), Nov. 10, 1986, 100 Stat. 3541; Pub. L. 99–653, § 7(c), Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, §§ 2(n)(2), 9(m), Oct. 24, 1988, 102 Stat. 2613, 2620; Pub. L. 100–690, title VII, §§ 7344(a), 7348(a), Nov. 18, 1988, 102 Stat. 4470, 4473; Pub. L. 101–649, title I, § 153(b), title V, §§ 505(a), 508(a), 544(b), title VI, § 602(a), (b), Nov. 29, 1990, 104 Stat. 5006, 5050, 5051, 5061, 5077, 5081; Pub. L. 102–232, title III, §§ 302(d)(3), 307(h), (k), Dec. 12, 1991, 105 Stat. 1745, 1755, 1756; Pub. L. 103–322, title XIII, § 130003(d), Sept. 13, 1994, 108 Stat. 2026; Pub. L. 103–416, title II, §§ 203(b), 219(g), Oct. 25, 1994, 108 Stat. 4311, 4317; Pub. L. 104–132, title IV, §§ 414(a), 435(a), Apr. 24, 1996, 110 Stat. 1270, 1274; renumbered ch. 4, § 237, and amended Pub. L. 104–208, div. C, title I, § 108(c), title III, §§ 301(d), 305(a)(2), 308(d)(2), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)–(N), (5), 344(b), 345(b), 347(b), 350(a), 351(b), title VI, § 671(a)(4)(B), (d)(1)(C), Sept. 30, 1996, 110 Stat. 3009–558, 3009–579, 3009–598, 3009–617, 3009–619 to 3009–622, 3009–637 to 3009–640, 3009–721, 3009–723; Pub. L. 106–386, div. B, title V, § 1505(b)(1), (c)(2), Oct. 28, 2000, 114 Stat. 1525, 1526; Pub. L. 106–395, title II, § 201(c)(1), (2), Oct. 30, 2000, 114 Stat. 1634, 1635; Pub. L. 107–56, title IV, § 411(b)(1), Oct. 26, 2001, 115 Stat. 348; Pub. L. 108–458, title V, §§ 5304(b), 5402, 5501(b), 5502(b), Dec. 17, 2004, 118 Stat. 3736, 3737, 3740, 3741; Pub. L. 109–13, div. B, title I, § 105(a)(1), (b), May 11, 2005, 119 Stat. 309, 310; Pub. L. 109–248, title IV, § 401, July 27, 2006, 120 Stat. 622; Pub. L. 109–271, § 6(c), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

Section 301 of the Immigration Act of 1990, referred to in subsec. (a)(1)(E)(ii), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.

Section 112 of the Immigration Act of 1990, referred to in subsec. (a)(1)(E)(ii), is section 112 of Pub. L. 101–649, which is set out as a note under section 1153 of this title.

The Military Selective Service Act, referred to in subsec. (a)(2)(D)(iii), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

The Trading With the Enemy Act, referred to in subsec. (a)(2)(D)(iii), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix. For complete classification of this Act to the Code, see Tables.

The Alien Registration Act, 1940, referred to in subsec. (a)(3)(B)(i), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Section 36(a) of that act was classified to section 457(c) of this title and was repealed by section 403(a)(39) of act June 27, 1952.

The Foreign Agents Registration Act of 1938, referred to in subsec. (a)(3)(B)(ii), is act June 8, 1938, ch. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (§ 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

CODIFICATION

Section was formerly classified to section 1251 of this title prior to renumbering by Pub. L. 104–208.

[1] So in original. Probably should be "in".

PRIOR PROVISIONS

A prior section 1227, acts June 27, 1952, ch. 477, title II, ch. 4, § 237, 66 Stat. 201; Dec. 29, 1981, Pub. L. 97–116, § 7, 95 Stat. 1615; Oct. 18, 1986, Pub. L. 99–500, § 101(b) [title II, § 206(b)(2)], as added Oct. 24, 1988, Pub. L. 100–525, § 4(b)(4), 102 Stat. 2615; Oct. 24, 1988, Pub. L. 100–525, § 9(*l*), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(2), 104 Stat. 5057; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(4)(B), 105 Stat. 1752; Apr. 24, 1996, Pub. L. 104–132, title IV, § 422(b), 110 Stat. 1272; Sept. 30, 1996, Pub. L. 104–208, div. C, title III, § 308(d)(5), 110 Stat. 3009–619, related to immediate deportation of aliens excluded from admission or entering in violation of law, prior to repeal by Pub. L. 104–208, div. C, title III, §§ 305(a)(1), 309, Sept. 30, 1996, 110 Stat. 3009–597, 3009–625, effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996. See section 1231 of this title.

AMENDMENTS

2006—Subsec. (a)(1)(H)(ii). Pub. L. 109–271 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is an alien who qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154(a)(1)(B) of this title.''

Subsec. (a)(2)(A)(v), (vi). Pub. L. 109–248 added cl. (v) and redesignated former cl. (v) as (vi).

2005—Subsec. (a)(4)(B). Pub. L. 109–13, § 105(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity (as defined in section 1182(a)(3)(B)(iv) of this title) is deportable.''

Subsec. (a)(4)(E). Pub. L. 109–13, § 105(b), repealed Pub. L. 108–458, § 5402. See 2004 Amendment note below.

2004—Subsec. (a)(1)(B). Pub. L. 108–458, § 5304(b), substituted ''United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is'' for ''United States is''.

Subsec. (a)(4)(D). Pub. L. 108–458, § 5501(b), substituted ''Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing'' for ''Assisted in Nazi persecution or engaged in genocide'' in heading and ''clause (i), (ii), or (iii)'' for ''clause (i) or (ii)'' in text.

Subsec. (a)(4)(E). Pub. L. 108–458, § 5502(b), added subpar. (E) relating to participation in the commission of severe violations of religious freedom.

Pub. L. 108–458, § 5402, which added subpar. (E) relating to recipient of military-type training, was repealed by Pub. L. 109–13, § 105(b). See Effective Date of 2005 Amendment note below.

2001—Subsec. (a)(4)(B). Pub. L. 107–56 substituted ''section 1182(a)(3)(B)(iv) of this title'' for ''section 1182(a)(3)(B)(iii) of this title''.

2000—Subsec. (a)(1)(H). Pub. L. 106–386, § 1505(c)(2), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), and added cl. (ii).

Subsec. (a)(3)(D). Pub. L. 106–395, § 201(c)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any Federal or State law is deportable.''

Subsec. (a)(6). Pub. L. 106–395, § 201(c)(1), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.''

Subsec. (a)(7). Pub. L. 106–386, § 1505(b)(1), added par. (7).

1996—Subsec. (a). Pub. L. 104–208, § 308(e)(2)(C), substituted ''removed'' for ''deported'' in introductory provisions.

Pub. L. 104–208, § 301(d)(1), substituted ''in and admitted to the United States'' for ''in the United States'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–208, § 301(d)(2), substituted ''Inadmissible'' for ''Excludable'' in par. heading.

Subsec. (a)(1)(A). Pub. L. 104–208, §§ 301(d)(3), 308(d)(3)(A), amended subpar. (A) identically, substituting ''inadmissible'' for ''excludable''.

Pub. L. 104–208, § 301(d)(2), substituted ''Inadmissible'' for ''Excludable'' in subpar. heading.

Subsec. (a)(1)(B). Pub. L. 104–208, § 301(d)(4), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Any alien who entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or any other law of the United States is deportable.''

Subsec. (a)(1)(E)(iii). Pub. L. 104–208, § 351(b), inserted ''an individual who at the time of the offense was'' after ''aided only''.

Subsec. (a)(1)(F). Pub. L. 104–208, § 671(d)(1)(C), struck out heading and text of subpar. (F). Text read as follows: ''Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 1161 of this title who fails to meet the requirement of section 1161(d)(5)(A) of this title by the end of the applicable period is deportable.''

Subsec. (a)(1)(G). Pub. L. 104–208, § 308(f)(1)(L), substituted ''admission'' for ''entry'' wherever appearing.

Subsec. (a)(1)(H). Pub. L. 104–208, § 308(f)(5), which directed amendment of subsec. (a)(1)(H)(ii) by striking ''at entry'', was executed by striking ''at entry'' after ''grounds of inadmissibility'' in concluding provisions of subpar. (H) to reflect the probable intent of Congress.

Pub. L. 104–208, § 308(f)(1)(M), substituted ''admission as aliens'' for ''entry as aliens'' in introductory provisions and ''such admission'' for ''such entry'' in cl. (ii).

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

Pub. L. 104–208, § 308(d)(2)(A), (3)(A), amended subpar. (H) identically, substituting ''inadmissible'' for ''excludable'' in introductory provisions.

Subsec. (a)(2)(A)(i)(I). Pub. L. 104–208, § 671(a)(4)(B), substituted ''1255(j)'' for ''1255(i)''.

Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry''.

Subsec. (a)(2)(A)(i)(II). Pub. L. 104–132, § 435(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,''.

Subsec. (a)(2)(A)(ii), (iii). Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry''.

Subsec. (a)(2)(A)(iv). Pub. L. 104–208, § 108(c)(2), added cl. (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(2)(A)(v). Pub. L. 104–208, § 108(c)(3), substituted ''(iii), and (iv)'' for ''and (iii)''.

Pub. L. 104–208, § 108(c)(1), redesignated cl. (iv) as (v).

Subsec. (a)(2)(B). Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry'' in cls. (i) and (ii).

Subsec. (a)(2)(C). Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry''.

Subsec. (a)(2)(E). Pub. L. 104–208, § 350(a), added subpar. (E).

Subsec. (a)(2)(E)(i), (ii). Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry''.

Subsec. (a)(3)(C). Pub. L. 104–208, § 345(b), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''Any alien who is the subject of a final order for violation of section 1324c of this title is deportable.''

Subsec. (a)(3)(D). Pub. L. 104–208, § 344(b), added subpar. (D).

Subsec. (a)(4)(A), (B). Pub. L. 104–208, § 308(f)(1)(N), substituted ''admission'' for ''entry''.

Subsec. (a)(4)(C)(ii). Pub. L. 104–208, § 308(d)(2)(B), substituted ''inadmissibility'' for ''excludability''.

Subsec. (a)(6). Pub. L. 104–208, § 347(b), added par. (6).

Subsec. (c). Pub. L. 104–208, § 308(d)(2)(C), substituted ''inadmissibility'' for ''exclusion''.

Subsec. (d). Pub. L. 104–208, § 308(d)(2)(D), struck out subsec. (d) which read as follows: ''Notwithstanding any other provision of this subchapter, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 1225 of this title is deemed for purposes of this chapter to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under part IV of this subchapter. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.''

Pub. L. 104–132, § 414(a), added subsec. (d).

1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103–322 inserted ''(or 10 years in the case of an alien provided lawful permanent resident status under section 1255(i) of this title)'' after ''five years''.

Subsec. (a)(2)(C). Pub. L. 103–416, § 203(b)(1), substituted '', or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry,'' for ''in violation of any law,'' and inserted ''in violation of any law'' after ''title 18)''.

Subsec. (a)(3)(B)(ii), (iii). Pub. L. 103–416, § 203(b)(2), inserted ''an attempt or'' before ''a conspiracy''.

Subsec. (c). Pub. L. 103–416, § 219(g), substituted ''and (3)(A) of subsection (a)'' for ''or (3)(A) of subsection (a)''.

1991—Subsec. (a). Pub. L. 102–232, § 307(h)(1), substituted ''if the alien is within one or more of the following classes of deportable aliens'' for ''if the alien is deportable as being within one or more of the following classes of aliens''.

Subsec. (a)(1)(D)(i). Pub. L. 102–232, § 307(h)(2), inserted ''respective'' after ''terminated under such''.

Subsec. (a)(1)(E)(i). Pub. L. 102–232, § 307(h)(3), inserted ''any'' after ''at the time of'' and after ''within 5 years of the date of'' in parenthetical provision.

Subsec. (a)(1)(E)(ii), (iii). Pub. L. 102–232, § 307(h)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(1)(G). Pub. L. 102–232, § 307(h)(5), substituted ''section 1182(a)(6)(C)(i)'' for ''section 1182(a)(5)(C)(i)''.

Subsec. (a)(1)(H). Pub. L. 102–232, § 307(h)(6), substituted ''paragraph (4)(D)'' for ''paragraph (6) or (7)''.

Subsec. (a)(2)(D). Pub. L. 102–232, § 307(h)(7), inserted ''or attempt'' after ''conspiracy''.

Subsec. (a)(3)(C). Pub. L. 102–232, § 307(h)(8), added subpar. (C).

Subsec. (a)(4)(A), (B). Pub. L. 102–232, § 307(h)(9), substituted ''after entry engages'' for ''after entry has engaged''.

Subsec. (a)(4)(C). Pub. L. 102–232, § 307(h)(10), substituted ''excludability'' for ''excluability''.

Subsec. (c). Pub. L. 102–232, § 307(k)(2), redesignated subsec. (h) as (c) and substituted ''existed'' for ''exist''.

Subsec. (d). Pub. L. 102–232, § 307(k)(1), struck out subsec. (d) which related to applicability of this section to aliens belonging to any of the classes enumerated in subsection (a) of this section.

Subsec. (h). Pub. L. 102–232, § 307(k)(2), redesignated subsec. (h) as (c).

Pub. L. 102–232, § 302(d)(3), struck out comma after ''(3)(A)''.

1990—Subsec. (a). Pub. L. 101–649, § 602(a), amended subsec. (a) generally, consolidating 20 categories of excludable aliens into 5 broader classes.

Pub. L. 101–649, § 544(b), added par. (21) which read as follows: ''is the subject of a final order for violation of section 1324c of this title.''

Pub. L. 101–649, § 508(a), substituted ''conspiracy or attempt'' for ''conspiracy'' in par. (11).

Subsec. (b). Pub. L. 101–649, § 602(b), redesignated subsec. (e) as (b), substituted ''paragraph (4) of subsection (a) of this section'' for ''subsection (a)(6) or (7) of this section'' and struck out former subsec. (b) which related to nonapplicability of subsec. (a)(4) of this section.

Pub. L. 101–649, § 505(a), struck out ''(1)'' after ''crimes shall not apply'' and '', or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter'' at end of first sentence, and inserted ''or who has been convicted of an aggravated felony'' after ''subsection (a)(11) of this section'' in second sentence.

Subsec. (c). Pub. L. 101–649, § 602(b)(1), struck out subsec. (c) which related to fraudulent entry.

Subsec. (e). Pub. L. 101–649, § 602(b)(2)(B), redesignated subsec. (e) as (b).

Subsecs. (f), (g). Pub. L. 101–649, § 602(b)(1), struck out subsecs. (f) and (g) which related to waiver of deportation in specified cases and hardship waivers, respectively.

Subsec. (h). Pub. L. 101–649, § 153(b)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Paragraphs (1), (2), (5), (9), or (12) of subsection (a) of this section (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that exist before the date the alien was provided such special immigrant status.''

Pub. L. 101–649, § 153(b)(1), added subsec. (h).

1988—Subsec. (a)(4). Pub. L. 100–690, § 7344(a), inserted cl. (B).

Subsec. (a)(14). Pub. L. 100–690 inserted ''any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, or any revolver or'' after ''law''.

Subsec. (a)(17). Pub. L. 100–525, § 9(m), substituted ''amendment, thereof, known as the Trading With the Enemy Act'' for ''amendment thereof; the Trading With the Enemy Act''.

Subsec. (a)(20). Pub. L. 100–525, § 2(n)(2), substituted ''an alien lawfully admitted'' for ''an alien who becomes lawfully admitted''.

1986—Subsec. (a)(9). Pub. L. 99–639, § 2(b)(1), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(10). Pub. L. 99–653 repealed par. (10). Prior to repeal, par. (10) read as follows: ''entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 1228(a) of this title and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere);''.

Subsec. (a)(11). Pub. L. 99–570 substituted ''any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)'' for ''any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate''.

Subsec. (a)(20). Pub. L. 99–603 added par. (20).

Subsec. (g). Pub. L. 99–639, § 2(b)(2), added subsec. (g).

1981—Subsec. (f). Pub. L. 97–116 designated existing provision as par. (1)(A), substituted provision authorizing discretionary waiver of deportation based on visa fraud or misrepresentation in the case of an alien, other than an alien described in subsec. (a)(19) of this section, who is the spouse, parent, or child of a citizen

of the United States or of an alien lawfully admitted to the United States for permanent residence and who was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds specified in section 1182(a)(14), (20), and (21) of this title which were a direct result of that fraud or misrepresentation, with relief available to those who have made innocent, as well as fraudulent, misrepresentations, for provision requiring mandatory waiver of deportation based on visa fraud or misrepresentation at the time of entry in the case of an alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence who is otherwise admissible, and added pars. (1)(B) and (2).

1978—Subsec. (a)(19). Pub. L. 95–549 added par. (19).

1976—Subsec. (a)(10). Pub. L. 94–571 substituted ''(other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere)'' for ''(other than an alien who is a native-born citizen of any of the countries enumerated in section 1101(a)(27)(A) of this title and an alien described in section 1101(a)(27)(B) of this title)''.

1965—Subsec. (a)(10). Pub. L. 89–236 substituted ''section 1101(a)(27)(A) of this title'' for ''section 1101(a)(27)(C) of this title''.

1961—Subsec. (f). Pub. L. 87–301 added subsec. (f).

1960—Subsec. (a)(11). Pub. L. 86–648 inserted ''or marihuana'' after ''narcotic drugs''.

1956—Subsec. (a)(11). Act July 18, 1956, § 301(b), included conspiracy to violate any narcotic law, and the illicit possession of narcotics, as additional grounds for deportation.

Subsec. (b). Act July 18, 1956, § 301(c), inserted at end ''The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a)(11) of this section.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, § 105(a)(2), May 11, 2005, 119 Stat. 309, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005], and the amendment, and section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)), as amended by such paragraph, shall apply to—

''(A) removal proceedings instituted before, on, or after the date of the enactment of this division [May 11, 2005]; and

''(B) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.''

Pub. L. 109–13, div. B, title I, § 105(b), May 11, 2005, 119 Stat. 310, provided that: ''Effective as of the date of the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) [Dec. 17, 2004], section 5402 of such Act [amending this section] is repealed, and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 5304(b) of Pub. L. 108–458 effective Dec. 17, 2004, and applicable to revocations under sections 1155 and 1201(i) of this title made before, on, or after such date, see section 5304(d) of Pub. L. 108–458, set out as a note under section 1155 of this title.

Amendment by section 5501(b) of Pub. L. 108–458 applicable to offenses committed before, on, or after Dec. 17, 2004, see section 5501(c) of Pub. L. 108–458, set out as a note under section 1182 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 2000 AMENDMENT

Pub. L. 106–395, title II, § 201(c)(3), Oct. 30, 2000, 114 Stat. 1635, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–638) and shall apply to voting occurring before, on, or after September 30, 1996. The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–637) and shall apply to representations made on or after September 30, 1996. Such amendments shall apply to individuals in proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] on or after September 30, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by sections 301(d), 305(a)(2), and 308(d)(2)(A)–(C), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)–(N), (5) 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 308(d)(2)(D) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective Sept. 30, 1996.

Amendment by section 344(b) of Pub. L. 104–208 applicable to representations made on or after Sept. 30, 1996, see section 344(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.

Amendment by section 347(b) of Pub. L. 104–208 applicable to voting occurring before, on, or after Sept. 30, 1996, see section 347(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.

Section 350(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to convictions, or violations of court orders, occurring after the date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 351(b) of Pub. L. 104–208 applicable to applications for waivers filed before, on, or after Sept. 30, 1996, but not applicable to such an application for which a final determination has been made as of Sept. 30, 1996, see section 351(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.

Amendment by section 671(a)(4)(B) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 414(b) of Pub. L. 104–132 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Apr. 24, 1996].''

Section 435(b) of Pub. L. 104–132 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act [Apr. 24, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 203(b) of Pub. L. 103–416 applicable to convictions occurring before, on, or after Oct. 25, 1994, see section 203(c) of Pub. L. 103–416, set out as

an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

Amendment by section 219(g) 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

Amendment by sections 302(d)(3), 307(h) 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.

Section 307(k) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 602(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 153(b)(1) 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.

Section 153(b)(2) of Pub. L. 101–649 provided that the amendment of the subsec. (h) added by section 153(b)(1) of Pub. L. 101–649 is effective on the date the amendments by section 602 of Pub. L. 101–649 become effective. See section 602(d) of Pub. L. 101–649, set out below.

Section 505(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and shall apply to convictions entered before, on, or after such date.''

Section 508(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to convictions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 544(d), formerly (c), of Pub. L. 101–649, as redesignated by Pub. L. 102–232, title III, § 306(c)(5)(B), Dec. 12, 1991, 105 Stat. 1752, provided that: ''The amendments made by this section [enacting section 1324c of this title and amending this section] shall apply to persons or entities that have committed violations on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 602(d) of Pub. L. 101–649 provided that: ''The amendments made by this section, and by section 603(b) of this Act [amending this section, sections 1161, 1252, 1253, and 1254 of this title, and section 402 of Title 42, The Public Health and Welfare], shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 7344(b) of Pub. L. 100–690 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.''

Section 7348(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any alien convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of possessing any firearm or destructive device referred to in such subsection.''

Amendment by section 2(n)(2) of 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.

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.

Amendment by Pub. L. 99–570 applicable to convictions occurring before, on, or after Oct. 27, 1986, see section 1751(c) of Pub. L. 99–570, set out as a note under section 1182 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 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.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956.

SAVINGS PROVISION

Section 602(c) of Pub. L. 101–649 provided that: ''Notwithstanding the amendments made by this section [amending this section], any alien who was deportable because of a conviction (before the date of the enactment of this Act [Nov. 29, 1990]) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) [now 237] of the Immigration and Nationality Act [8 U.S.C. 1227], as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d) [set out as a note above], the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which an alien is described in such subsection, occurred before the date of the enactment of this Act.''

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 CRIMINAL ALIENS

Section 510 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 306(a)(8), (9), Dec. 12, 1991, 105 Stat. 1751, provided that the Attorney General was to submit to appropriate Committees of Congress, by not later than Dec. 1, 1991, a report describing efforts of Immigration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States and including a criminal alien census and removal plan.

§ 1228. Expedited removal of aliens convicted of committing aggravated felonies

(a) Removal of criminal aliens

(1) in general

The Attorney General shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, other-

wise covered by section 1227(a)(2)(A)(i) of this title. Such proceedings shall be conducted in conformity with section 1229a of this title (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the Service and in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence. Nothing in this section 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.

(2) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1226(c) of this title, the Attorney General shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the alien's access to counsel and right to counsel under section 1362 of this title are not impaired.

(3) Expedited proceedings

(A) Notwithstanding any other provision of law, the Attorney General shall provide for the initiation and, to the extent possible, the completion of removal proceedings, and any administrative appeals thereof, in the case of any alien convicted of an aggravated felony before the alien's release from incarceration for the underlying aggravated felony.

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the removal of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

(4) Review

(A) The Attorney General shall review and evaluate removal proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to such Committees concerning the extent to which removal proceedings conducted under this section may adversely affect the ability of such aliens to contest removal effectively.

(b) Removal of aliens who are not permanent residents

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1227(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 1229a of this title.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or

(B) had permanent resident status on a conditional basis (as described in section 1186a of this title) at the time that proceedings under this section commenced.

(3) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 1252 of this title.

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose;

(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

(D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;

(E) a record is maintained for judicial review; and

(F) the final order of removal is not adjudicated by the same person who issues the charges.

(5) No alien described in this section shall be eligible for any relief from removal that the Attorney General may grant in the Attorney General's discretion.

(c)[1] Presumption of deportability

An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

(c)[1] Judicial removal

(1) Authority

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

(2) Procedure

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial removal.

(B) Notwithstanding section 1252b[2] of this title, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentenc-

[1] So in original. Two subsecs. (c) have been enacted.

[2] See References in Text note below.

ing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 1227(a)(2)(A) of this title.

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal under this chapter, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 1229a of this title.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

(iv) The court may order the alien removed if the Attorney General demonstrates that the alien is deportable under this chapter.

(3) Notice, appeal, and execution of judicial order of removal

(A)(i) A judicial order of removal or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 1252 of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 1252(b)(1) of this title, or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order of removal, which shall designate the defendant's country of choice for removal and any alternate country pursuant to section 1253(a)[2] of this title.

(4) Denial of judicial order

Denial of a request for a judicial order of removal shall not preclude the Attorney General from initiating removal proceedings pursuant to section 1229a of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1227(a) of this title.

(5) Stipulated judicial order of removal

The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this chapter, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation.

(June 27, 1952, ch. 477, title II, ch. 4, § 238, formerly ch. 5, § 242A, as added Pub. L. 100–690, title VII, § 7347(a), Nov. 18, 1988, 102 Stat. 4471; amended Pub. L. 101–649, title V, § 506(a), Nov. 29, 1990, 104 Stat. 5050; Pub. L. 102–232, title III, § 309(b)(10), Dec. 12, 1991, 105 Stat. 1759; Pub. L. 103–322, title XIII, § 130004(a), (c), Sept. 13, 1994, 108 Stat. 2026, 2027; Pub. L. 103–416, title II, §§ 223(a), 224(a), Oct. 25, 1994, 108 Stat. 4322; Pub. L. 104–132, title IV, §§ 440(g), 442(a), (c), Apr. 24, 1996, 110 Stat. 1278–1280; renumbered ch. 4, § 238, and amended Pub. L. 104–208, div. C, title III, §§ 304(c)(1), 306(d), 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H), 374(a), title VI, § 671(b)(13), (c)(5), (6), Sept. 30, 1996, 110 Stat. 3009–597, 3009–612, 3009–615, 3009–616, 3009–619, 3009–620, 3009–622, 3009–623, 3009–625, 3009–647, 3009–722, 3009–723.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a)(4)(B), see Effective Date note below.

Section 1252b of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 104–208, div. C, title III, § 308(b)(6), Sept. 30, 1996, 110 Stat. 3009–615.

Section 1253 of this title, referred to in subsec. (c)(3)(B), was amended generally by Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, subsec. (a) no longer contains provisions relating to alternate countries. Provisions similar to those contained in former subsec. (a) of section 1253 are now contained in section 1231(b) of this title.

Federal Rule of Criminal Procedure 11, referred to in subsec. (c)(5), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was formerly classified to section 1252a of this title prior to renumbering by Pub. L. 104–208.

PRIOR PROVISIONS

A prior section 1228, act June 27, 1952, ch. 477, title II, ch. 4, § 238, 66 Stat. 202, as amended, which related to entry through or from foreign contiguous territory and adjacent islands, was renumbered section 233 of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 308(b)(4), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1223 of this title.

AMENDMENTS

1996—Pub. L. 104–208, § 308(b)(5), substituted "removal" for "deportation" in section catchline.

Subsec. (a). Pub. L. 104–208, § 308(e)(10), substituted "Removal" for "Deportation" in heading.

Subsec. (a)(1). Pub. L. 104–208, § 308(g)(1), substituted "1227(a)(2)(A)(iii)" for "1251(a)(2)(A)(iii)".

Pub. L. 104–208, § 308(e)(1)(F), substituted "removal" for "deportation" in two places.

Pub. L. 104–208, § 308(c)(4)(A), inserted at end "Nothing in this section shall be construed to create any sub-

stantive 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.''

Pub. L. 104–208, § 308(c)(1)(A), substituted ''section 1229a'' for ''section 1252''.

Pub. L. 104–132, § 440(g)(1)(B), struck out '', where warranted,'' after ''assures expeditious deportation''.

Pub. L. 104–132, § 440(g)(1)(A), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), 671(c)(5), substituted ''any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title'' for ''aggravated felonies (as defined in section 1101(a)(43) of this title)''.

Subsec. (a)(2). Pub. L. 104–208, § 308(c)(1)(B), substituted ''section 1226(c)'' for ''section 1252(a)(2)''.

Pub. L. 104–132, § 440(g)(2), which directed substitution of ''any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1251(a)(2)(A)(ii) of this title for which both predicate offenses are covered by section 1251(a)(2)(A)(i) of this title.'' for ''aggravated felony'' and all that follows through ''before any scheduled hearings.'', was repealed by Pub. L. 104–208, § 671(c)(6).

Subsec. (a)(3), (4). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation'' wherever appearing.

Subsec. (b). Pub. L. 104–208, § 308(e)(10), substituted ''Removal'' for ''Deportation'' in heading.

Subsec. (b)(1). Pub. L. 104–208, § 308(g)(5)(C), substituted ''section 1229a'' for ''section 1252(b)''.

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

Pub. L. 104–208, § 308(c)(1)(C), substituted ''section 1227(a)(2)(A)(iii)'' for ''section 1251(a)(2)(A)(iii)''.

Subsec. (b)(2)(A). Pub. L. 104–132, § 442(a)(1)(A), substituted ''or'' for ''and'' at end.

Subsec. (b)(2)(B). Pub. L. 104–132, § 442(a)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''is not eligible for any relief from deportation under this chapter.''

Subsec. (b)(3). Pub. L. 104–208, § 308(g)(2)(A), substituted ''section 1252'' for ''section 1105a''.

Pub. L. 104–132, § 442(a)(2), substituted ''14 calendar days'' for ''30 calendar days''.

Subsec. (b)(4)(B). Pub. L. 104–132, § 442(a)(3), substituted ''proceedings'' for ''proccedings''.

Subsec. (b)(4)(D). Pub. L. 104–208, § 304(c)(1)(A), (B), redesignated subpar. (E) as (D) and amended it generally, and struck out former subpar. (D). Prior to amendments, subpars. (D) and (E) read as follows:

''(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

''(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;''.

Pub. L. 104–132, § 442(a)(4)(B), added subpar. (D). Former subpar. (D) redesignated (F).

Subsec. (b)(4)(E). Pub. L. 104–208, § 304(c)(1)(C), redesignated subpar. (F) as (E). Former subpar. (E) amended generally and redesignated (D).

Pub. L. 104–132, § 442(a)(4)(B), added subpar. (E). Former subpar. (E) redesignated (G).

Subsec. (b)(4)(F). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation''.

Pub. L. 104–208, § 304(c)(1)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 104–132, § 442(a)(4)(A), redesignated subpar. (D) as (F).

Subsec. (b)(4)(G). Pub. L. 104–208, § 304(c)(1)(C), redesignated subpar. (G) as (F).

Pub. L. 104–132, § 442(a)(4)(A), redesignated subpar. (E) as (G).

Subsec. (b)(5). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation''.

Pub. L. 104–132, § 442(a)(5), added par. (5).

Subsec. (c). Pub. L. 104–208, § 671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Pub. L. 104–208, § 308(e)(10), substituted ''removal'' for ''deportation'' in heading.

Pub. L. 104–132, § 442(c), added subsec. (c), relating to presumption of deportability.

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

Subsec. (c)(2)(A). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation''.

Subsec. (c)(2)(B). Pub. L. 104–208, § 308(g)(1), substituted ''section 1227(a)(2)(A)'' for ''section 1251(a)(2)(A)''.

Subsec. (c)(2)(C). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation''.

Subsec. (c)(2)(D)(ii). Pub. L. 104–208, § 308(g)(5)(D), substituted ''section 1229a'' for ''section 1252(b)''.

Subsec. (c)(2)(D)(iv). Pub. L. 104–208, § 308(e)(2)(D), substituted ''removed'' for ''deported''.

Subsec. (c)(3). Pub. L. 104–208, § 308(e)(10), substituted ''removal'' for ''deportation'' in heading.

Subsec. (c)(3)(A)(i). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation''.

Subsec. (c)(3)(A)(ii). Pub. L. 104–208, § 308(g)(2)(A), substituted ''section 1252'' for ''section 1105a''.

Subsec. (c)(3)(A)(iii). Pub. L. 104–208, § 308(g)(2)(C), substituted ''section 1252(b)(1)'' for ''section 1105a(a)(1)''.

Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation'' in two places.

Subsec. (c)(3)(B). Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation'' wherever appearing.

Subsec. (c)(4). Pub. L. 104–208, § 308(g)(5)(A)(ii), substituted ''section 1229a'' for ''section 1252''.

Pub. L. 104–208, § 308(g)(1), substituted ''section 1227(a)'' for ''section 1251(a)''.

Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation'' in two places.

Subsec. (c)(5). Pub. L. 104–208, § 308(e)(10), substituted ''removal'' for ''deportation'' in heading.

Pub. L. 104–208, § 308(e)(1)(F), substituted ''removal'' for ''deportation'' in two places.

Subsec. (d). Pub. L. 104–208, § 671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Subsec. (d)(1). Pub. L. 104–208, § 374(a)(1), substituted ''who is deportable'' for ''whose criminal conviction causes such alien to be deportable under section 1251(a)(2)(A) of this title''.

Subsec. (d)(4). Pub. L. 104–208, § 374(a)(2), struck out ''without a decision on the merits'' after ''Denial''.

Subsec. (d)(5). Pub. L. 104–208, § 374(a)(3), added par. (5).

1994—Pub. L. 103–322, § 130004(c)(1), struck out ''procedures for'' after ''Expedited'' in section catchline.

Subsec. (a)(1). Pub. L. 103–322, § 130004(c)(2), substituted subsec. heading for one which read ''In general'', redesignated existing subsec. (a) as par. (1) of subsec. (a), and inserted heading.

Subsec. (a)(2). Pub. L. 103–322, § 130004(c)(3), redesignated subsec. (b) as par. (2) of subsec. (a).

Subsec. (a)(3). Pub. L. 103–322, § 130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a), and redesignated pars. (1) and (2) of former subsec. (d) as subpars. (A) and (B), respectively, of subsec. (a)(3).

Subsec. (a)(4). Pub. L. 103–322, § 130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a), redesignated par. (1) of former subsec. (e) as subpar. (A) of subsec. (a)(4) and struck out at end ''Within 12 months after the effective date of this section, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate concerning the effectiveness of such deportation proceedings in facilitating the deportation of aliens convicted of aggravated felonies.'', and redesignated par. (2) of former subsec. (e) as subpar. (B) of subsec. (a)(4).

Subsec. (b). Pub. L. 103–322, § 130004(a), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (b)(4)(D), (E). Pub. L. 103–416, § 223(a), struck out ''the determination of deportability is supported by

clear, convincing, and unequivocal evidence and'' before ''a record is'' in subpar. (D) and substituted ''adjudicated'' for ''entered'' in subpar. (E).

Subsec. (c). Pub. L. 103–322, § 130004(c)(4), struck out heading and text of subsec. (c). Prior to amendment, text read as follows: ''An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.''

Subsec. (d). Pub. L. 103–416, § 224(a), added subsec. (d).

Pub. L. 103–322, § 130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a).

Subsec. (e). Pub. L. 103–322, § 130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a).

1991—Subsec. (a). Pub. L. 102–232 inserted closing parenthesis before period at end of first sentence.

1990—Subsec. (d)(2). Pub. L. 101–649 struck out before period at end '', unless the chief prosecutor or the judge in whose jurisdiction conviction occurred submits a written request to the Attorney General that such alien be so deported''.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 304(c)(2) of div. C of Pub. L. 104–208 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 442(a) of Public Law 104–132.''

Amendment by section 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H) 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 306(d) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132.

Section 374(c) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of section 224(a) of the Immigration and Nationality Technical Corrections Act of 1994 [Pub. L. 103–416].''

Amendment by section 671(b)(13) of Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, see section 671(b)(14) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 671(c)(5), (6) of Pub. L. 104–208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, see section 671(c)(7) of Pub. L. 104–208, set out as a note under section 1189 of this title.

Section 442(d) of Pub. L. 104–132 provided that: ''The amendments made by this section [amending this section and section 1105a of this title] shall become effective no later than 60 days after the publication by the Attorney General of implementing regulations that shall be published on or before January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 224(a) of Pub. L. 103–416 applicable to all aliens whose adjudication of guilt or guilty plea is entered in the record after Oct. 25, 1994, see section 224(c) of Pub. L. 103–416, set out as a note under section 1252 of this title.

Section 130004(d) of Pub. L. 103–322 provided that: ''The amendments made by this section [amending this section and section 1105a of this title] shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act [Sept. 13, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 506(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE

Section 7347(c) of Pub. L. 100–690 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 1105a of this title] shall apply in the case of any alien convicted of an aggravated felony on or after the date of the enactment of this Act [Nov. 18, 1988].''

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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

EXPANDED SPECIAL REMOVAL PROCEEDINGS

Section 130007 of Pub. L. 103–322, as amended by Pub. L. 104–208, div. C, title III, § 308(g)(5)(F), (10)(F), title VI, § 671(a)(6), Sept. 30, 1996, 110 Stat. 3009–623, 3009–625, 3009–721, provided that:

''(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section[s] 238(a)(3) and 239(d) of the Immigration and Nationality Act [8 U.S.C. 1228(a)(3), 1229(d)] to ensure that such aliens are immediately deportable upon their release from incarceration.

''(b) DETENTION AND REMOVAL OF CRIMINAL ALIENS.—Subject to the availability of appropriations, the Attorney General may—

''(1) construct or contract for the construction of 2 Immigration and Naturalization Service Processing Centers to detain criminal aliens; and

''(2) provide for the detention and removal of such aliens.

''(c) REPORT.—By September 30, 1996, and September 30, 1998 the Attorney General shall report to the Congress on the programs referred to in subsections (a) and (b). The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $55,000,000 for fiscal year 1995;

''(2) $54,000,000 for fiscal year 1996;

''(3) $49,000,000 for fiscal year 1997; and

''(4) $2,000,000 for fiscal year 1998.''

§ 1229. Initiation of removal proceedings

(a) Notice to appear

(1) In general

In removal proceedings under section 1229a of this title, written notice (in this section referred to as a ''notice to appear'') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) of this section and (ii) a current list of counsel prepared under subsection (b)(2) of this section.

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings

(A) In general

In removal proceedings under section 1229a of this title, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying—

(i) the new time or place of the proceedings, and

(ii) the consequences under section 1229a(b)(5) of this title of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception

In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files

The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel

(1) In general

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 1229a of this title, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 1229a of this title. Such lists shall be provided under subsection (a)(1)(E) of this section and otherwise made generally available.

(3) Rule of construction

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 1229a of this title if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F) of this section.

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) 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.

(e) Certification of compliance with restrictions on disclosure

(1) In general

In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 1367 of this title have been complied with.

(2) Locations

The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 1101(a)(15) of this title.

(June 27, 1952, ch. 477, title II, ch. 4, § 239, as added Pub. L. 104–208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009–587; amended Pub. L. 109–162, title VIII, § 825(c)(1), Jan. 5, 2006, 119 Stat. 3065; Pub. L. 109–271, § 6(d), Aug. 12, 2006, 120 Stat. 763.)

PRIOR PROVISIONS

A prior section 1229, act June 27, 1952, ch. 477, title II, ch. 4, § 239, 66 Stat. 203, as amended, which related to

designation of ports of entry for aliens arriving by aircraft, was renumbered section 234 of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 304(a)(1), Sept. 30, 1996, 110 Stat. 3009–587, and was transferred to section 1224 of this title.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–162 added subsec. (e).

Subsec. (e)(2)(B). Pub. L. 109–271 substituted ''(U)'' for ''(V)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, title VIII, § 825(c)(2), Jan. 5, 2006, 119 Stat. 3065, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 30 days after the date of the enactment of this Act [Jan. 5, 2006] and shall apply to apprehensions occurring on or after such date.''

EFFECTIVE DATE

Section 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 an Effective Date of 1996 Amendments 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.

§ 1229a. Removal proceedings

(a) Proceeding

(1) In general

An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) Charges

An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.

(3) Exclusive procedures

Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 1228 of this title.

(b) Conduct of proceeding

(1) Authority of immigration judge

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this chapter.

(2) Form of proceeding

(A) In general

The proceeding may take place—

(i) in person,

(ii) where agreed to by the parties, in the absence of the alien,

(iii) through video conference, or

(iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases

An evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.

(3) Presence of alien

If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

(4) Alien's rights in proceeding

In proceedings under this section, under regulations of the Attorney General—

(A) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings,

(B) the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this chapter, and

(C) a complete record shall be kept of all testimony and evidence produced at the proceeding.

(5) Consequences of failure to appear

(A) In general

Any alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of this title has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2) of this section). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 1229(a)(1)(F) of this title.

(B) No notice if failure to provide address information

No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title.

(C) Rescission of order

Such an order may be rescinded only—

(i) upon a motion to reopen filed within 180 days after the date of the order of re-

moval if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1) of this section), or

(ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a) of this title or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge.

(D) Effect on judicial review

Any petition for review under section 1252 of this title of an order entered in absentia under this paragraph shall (except in cases described in section 1252(b)(5) of this title) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable.

(E) Additional application to certain aliens in contiguous territory

The preceding provisions of this paragraph shall apply to all aliens placed in proceedings under this section, including any alien who remains in a contiguous foreign territory pursuant to section 1225(b)(2)(C) of this title.

(6) Treatment of frivolous behavior

The Attorney General shall, by regulation—

(A) define in a proceeding before an immigration judge or before an appellate administrative body under this subchapter, frivolous behavior for which attorneys may be sanctioned,

(B) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed, and

(C) impose appropriate sanctions (which may include suspension and disbarment) in the case of frivolous behavior.

Nothing in this paragraph shall be construed as limiting the authority of the Attorney General to take actions with respect to inappropriate behavior.

(7) Limitation on discretionary relief for failure to appear

Any alien against whom a final order of removal is entered in absentia under this subsection and who, at the time of the notice described in paragraph (1) or (2) of section 1229(a) of this title, was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (e)(1) of this section) to attend a proceeding under this section, shall not be eligible for relief under section 1229b, 1229c, 1255, 1258, or 1259 of this title for a period of 10 years after the date of the entry of the final order of removal.

(c) Decision and burden of proof

(1) Decision

(A) In general

At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.

(B) Certain medical decisions

If a medical officer or civil surgeon or board of medical officers has certified under section 1222(b) of this title that an alien has a disease, illness, or addiction which would make the alien inadmissible under paragraph (1) of section 1182(a) of this title, the decision of the immigration judge shall be based solely upon such certification.

(2) Burden on alien

In the proceeding the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or

(B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.

In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents, not considered by the Attorney General to be confidential, pertaining to the alien's admission or presence in the United States.

(3) Burden on service in cases of deportable aliens

(A) In general

In the proceeding the Service has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

(B) Proof of convictions

In any proceeding under this chapter, any of the following documents or records (or a certified copy of such an official document or record) shall constitute proof of a criminal conviction:

(i) An official record of judgment and conviction.

(ii) An official record of plea, verdict, and sentence.

(iii) A docket entry from court records that indicates the existence of the conviction.

(iv) Official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.

(v) An abstract of a record of conviction prepared by the court in which the convic-

tion was entered, or by a State official associated with the State's repository of criminal justice records, that indicates the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence.

(vi) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(vii) Any document or record attesting to the conviction that is maintained by an official of a State or Federal penal institution, which is the basis for that institution's authority to assume custody of the individual named in the record.

(C) Electronic records

In any proceeding under this chapter, any record of conviction or abstract that has been submitted by electronic means to the Service from a State or court shall be admissible as evidence to prove a criminal conviction if it is—

(i) certified by a State official associated with the State's repository of criminal justice records as an official record from its repository or by a court official from the court in which the conviction was entered as an official record from its repository, and

(ii) certified in writing by a Service official as having been received electronically from the State's record repository or the court's record repository.

A certification under clause (i) may be by means of a computer-generated signature and statement of authenticity.

(4) Applications for relief from removal

(A) In general

An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

(i) satisfies the applicable eligibility requirements; and

(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

(B) Sustaining burden

The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant's application for relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.

(C) Credibility determination

Considering the totality of the circumstances, and all relevant factors, the immigration judge 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.

(5) Notice

If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the order of removal, including civil and criminal penalties.

(6) Motions to reconsider

(A) In general

The alien may file one motion to reconsider a decision that the alien is removable from the United States.

(B) Deadline

The motion must be filed within 30 days of the date of entry of a final administrative order of removal.

(C) Contents

The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority.

(7) Motions to reopen

(A) In general

An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).

(B) Contents

The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C) Deadline

(i) In general

Except as provided in this subparagraph, the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal.

(ii) Asylum

There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections[1] 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii) Failure to appear

The filing of a motion to reopen an order entered pursuant to subsection (b)(5) of this section is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) Special rule for battered spouses, children, and parents

Any limitation under this section on the deadlines for filing such motions shall not apply—

(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 1154(a)(1)(A) of this title, clause (ii) or (iii) of section 1154(a)(1)(B) of this title,,[1] section 1229b(b) of this title, or section 1254(a)(3) of this title (as in effect on March 31, 1997);

(II) if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen;

(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; and

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the removal of a qualified alien (as defined in section 1641(c)(1)(B) of this title[2] pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

(d) Stipulated removal

The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien's representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.

(e) Definitions

In this section and section 1229b of this title:

(1) Exceptional circumstances

The term ''exceptional circumstances'' refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

(2) Removable

The term ''removable'' means—

(A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 1182 of this title, or

(B) in the case of an alien admitted to the United States, that the alien is deportable under section 1227 of this title.

(June 27, 1952, ch. 477, title II, ch. 4, § 240, as added Pub. L. 104–208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009–589; amended Pub. L. 106–386, div. B, title V, § 1506(c)(1)(A), Oct. 28, 2000, 114 Stat. 1528; Pub. L. 109–13, div. B, title I, § 101(d), May 11, 2005, 119 Stat. 304; Pub. L. 109–162, title VIII, §§ 813(a)(1), 825(a), Jan. 5, 2006, 119 Stat. 3057, 3063.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsec. (c)(7)(C)(iv)(I), was repealed by Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615.

PRIOR PROVISIONS

A prior section 240 of act June 27, 1952, was renumbered section 240C, and is classified to section 1230 of this title.

AMENDMENTS

2006—Subsec. (c)(7)(A). Pub. L. 109–162, § 825(a)(1), inserted before period at end '', except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)''.

Subsec. (c)(7)(C)(iv). Pub. L. 109–162, § 825(a)(2)(A), (B), substituted ''spouses, children, and parents'' for ''spouses and children'' in heading and ''Any limitation under this section on the deadlines for filing such motions shall not apply'' for ''The deadline specified in subsection (b)(5)(C) of this section for filing a motion to reopen does not apply'' in introductory provisions.

Subsec. (c)(7)(C)(iv)(I). Pub. L. 109–162, § 825(a)(2)(C), which directed substitution of '', section 1229b(b) of this title, or section 1254(a)(3) of this title (as in effect on March 31, 1997)'' for ''or section 1229b(b) of this title'', was executed by making the substitution for ''or section 1229b(b)(2) of this title'', to reflect the probable intent of Congress.

Subsec. (c)(7)(C)(iv)(IV). Pub. L. 109–162, § 825(a)(2)(D)–(F), added subcl. (IV).

Subsec. (e)(1). Pub. L. 109–162, § 813(a)(1), substituted ''battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien,'' for ''serious illness of the alien''.

2005—Subsec. (c)(4) to (7). Pub. L. 109–13 added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

2000—Subsec. (c)(6)(C)(iv). Pub. L. 106–386 added cl. (iv).

[1] So in original.

[2] So in original. A closing parenthesis probably should appear.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, title VIII, § 813(a)(2), Jan. 5, 2006, 119 Stat. 3058, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to a failure to appear that occurs before, on, or after the date of the enactment of this Act [Jan. 5, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–13 effective May 11, 2005, and applicable to applications for asylum, withholding, or other relief from removal made on or after such date, see section 101(h)(2) of Pub. L. 109–13, set out as a note under section 1158 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. B, title V, § 1506(c)(1)(B), Oct. 28, 2000, 114 Stat. 1528, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1229–1229c) [Pub. L. 104–208].''

EFFECTIVE DATE

Section 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 an Effective Date of 1996 Amendments note under section 1101 of this title.

Subsec. (c)(3)(B), (C) of this section applicable to proving convictions entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments 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.

ELIMINATION OF TIME LIMITATIONS ON MOTIONS TO REOPEN DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE

Pub. L. 106–386, div. B, title V, § 1506(c)(2), Oct. 28, 2000, 114 Stat. 1528, as amended by Pub. L. 109–162, title VIII, §§ 814(a), 825(b), Jan. 5, 2006, 119 Stat. 3058, 3064, provided that:

''(A)(i) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1101 note))—

''(I) there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—

''(aa) if the basis of the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and

''(bb) if the motion is accompanied by a suspension of deportation application to be filed with the Secretary of Homeland Security or by a copy of the self-petition that will be filed with the Department of Homeland Security upon the granting of the motion to reopen; and

''(II) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)).

''(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[)] pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

''(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who are physically present in the United States and who—

''(i) are, or were, in deportation or exclusion proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

''(ii) have become eligible to apply for relief described in subparagraph (A)(i) as a result of the amendments made by—

''(I) subtitle G [§ 40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification]; or

''(II) this title [see Short Title of 2000 Amendment note set out under section 1101 of this title].''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) Special rule for battered spouse or child

(A) Authority

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title, subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

(B) Physical presence

Notwithstanding subsection (d)(2) of this section, for purposes of subparagraph (A)(ii) or for purposes of section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2) of this section. If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph, subparagraph (A)(ii), and section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) Good moral character

Notwithstanding section 1101(f) of this title, an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(iii) or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. 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.

(3) Recordation of date

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

(4) Children of battered aliens and parents of battered alien children

(A) In general

The Attorney General shall grant parole under section 1182(d)(5) of this title to any alien who is a—

(i) child of an alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) Duration of parole

The grant of parole shall extend from the time of the grant of relief under subsection

(b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. Failure by the alien granted relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.

(5) Application of domestic violence waiver authority

The authority provided under section 1227(a)(7) of this title may apply under paragraphs (1)(B), (1)(C), and (2)(A)(iv) in a cancellation of removal and adjustment of status proceeding.

(c) Aliens ineligible for relief

The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.

(3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a) of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

(d) Special rules relating to continuous residence or physical presence

(1) Termination of continuous period

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B) when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

(2) Treatment of certain breaks in presence

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service

The requirements of continuous residence or continuous physical presence in the United States under subsections (a) and (b) of this section shall not apply to an alien who—

(A) has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B) at the time of the alien's enlistment or induction was in the United States.

(e) Annual limitation

(1) Aggregate limitation

Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such section 1254(a) of this title.

(2) Fiscal year 1997

For fiscal year 1997, paragraph (1) shall only apply to decisions to cancel the removal of an alien, or suspend the deportation of an alien, made after April 1, 1997. Notwithstanding any other provision of law, the Attorney General may cancel the removal or suspend the depor-

tation, in addition to the normal allotment for fiscal year 1998, of a number of aliens equal to 4,000 less the number of such cancellations of removal and suspensions of deportation granted in fiscal year 1997 after April 1, 1997.

(3) Exception for certain aliens

Paragraph (1) shall not apply to the following:

(A) Aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act).

(B) Aliens in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation under section 1254(a)(3) of this title (as in effect before September 30, 1996).

(June 27, 1952, ch. 477, title II, ch. 4, § 240A, as added Pub. L. 104–208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009–594; amended Pub. L. 105–100, title II, § 204(a)–(c), Nov. 19, 1997, 111 Stat. 2200, 2201; Pub. L. 106–386, div. B, title V, §§ 1504(a), (b), 1505(b)(2), 1506(b)(1), Oct. 28, 2000, 114 Stat. 1522, 1524, 1525, 1527; Pub. L. 109–162, title VIII, §§ 813(c)(1), 822(a), (b), Jan. 5, 2006, 119 Stat. 3058, 3062, 3063; Pub. L. 109–271, § 6(e), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsecs. (b)(2)(B), (C), (4), (c)(6), and (e)(1), (3)(B), was repealed by Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615.

Section 1182(c) of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104–208, div. C, title III, § 304(b), Sept. 30, 1996, 110 Stat. 3009–597.

Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsecs. (b)(2)(B), (C), (4), and (e)(3)(A), is section 309 of title III of div. C of Pub. L. 104–208, as amended, which is set out as a note under section 1101 of this title.

AMENDMENTS

2006—Subsec. (b)(1)(C). Pub. L. 109–162, § 813(c)(1)(A), substituted ‘‘, subject to paragraph (5)’’ for ‘‘(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)’’.

Subsec. (b)(2)(A)(iv). Pub. L. 109–162, § 813(c)(1)(B), substituted ‘‘, subject to paragraph (5)’’ for ‘‘(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)’’.

Subsec. (b)(2)(B). Pub. L. 109–162, § 822(a)(2), which directed amendment of fourth sentence by substituting ‘‘this subparagraph, subparagraph (A)(ii),’’ for ‘‘subsection (b)(2)(B) of this section’’, was executed by making the substitution for language which read in the original ‘‘section 240A(b)(2)(B)’’, to reflect the probable intent of Congress.

Pub. L. 109–162, § 822(a)(1), substituted ‘‘(A)(ii)’’ for ‘‘(A)(i)(II)’’ in first sentence.

Subsec. (b)(2)(C). Pub. L. 109–162, § 822(b), substituted ‘‘(A)(iii)’’ for ‘‘(A)(i)(III)’’.

Subsec. (b)(4)(B). Pub. L. 109–271 substituted ‘‘the applicants were VAWA self-petitioners’’ for ‘‘they were applications filed under section 1154(a)(1)(A)(iii), (A)(iv), (B)(ii), or (B)(iii) of this title for purposes of section 1255 (a) and (c) of this title’’.

Subsec. (b)(5). Pub. L. 109–162, § 813(c)(1)(C), added par. (5).

2000—Subsec. (b)(1)(C). Pub. L. 106–386, § 1505(b)(2), inserted before semicolon ‘‘(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)’’.

Subsec. (b)(2). Pub. L. 106–386, § 1504(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ‘‘(2) The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

‘‘(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);

‘‘(B) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;

‘‘(C) the alien has been a person of good moral character during such period;

‘‘(D) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraph (1)(G) or (2) through (4) of section 1227(a) of this title, and has not been convicted of an aggravated felony; and

‘‘(E) the removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. 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.’’

Subsec. (b)(4). Pub. L. 106–386, § 1504(b), added par. (4).

Subsec. (d)(1). Pub. L. 106–386, § 1506(b)(1), substituted ‘‘(A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B)’’ for ‘‘when the alien is served a notice to appear under section 1229(a) of this title or’’.

1997—Subsec. (b)(1), (2). Pub. L. 105–100, § 204(b), in introductory provisions, substituted ‘‘may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien’’ for ‘‘may cancel removal in the case of an alien’’.

Subsec. (b)(3). Pub. L. 105–100, § 204(c), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ‘‘The Attorney General may adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of paragraph (1) or (2). The number of adjustments under this paragraph shall not exceed 4,000 for any fiscal year. The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General's cancellation of removal under paragraph (1) or (2) or determination under this paragraph.’’

Subsec. (e). Pub. L. 105–100, § 204(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ‘‘The Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title.’’

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. B, title V, § 1504(c), Oct. 28, 2000, 114 Stat. 1524, provided that: ‘‘Any individual who becomes eligible for relief by reason of the enactment of the amendments made by subsections (a) and (b) [amending this section], shall be eligible to file a motion to reopen pursuant to section 240(c)(6)(C)(iv) [now

8 U.S.C. 1229a(c)(7)(C)(iv)]. The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 587 [3009–587]). Such portions of the amendments made by subsection (b) that relate to section 244(a)(3) [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) shall take effect as if included in subtitle G [§ 40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification].''

Pub. L. 106–386, div. B, title V, § 1506(b)(2), Oct. 28, 2000, 114 Stat. 1527, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 587 [3009–587]).''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 204(e) of Pub. L. 105–100 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–546).''

EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 180 days after Sept. 30, 1996, with certain transitional provisions including provision that subsec. (d)(1), (2) of this section be applicable to notices to appear issued before, on, or after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments 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.

DISCRETION TO CONSENT TO AN ALIEN'S REAPPLICATION FOR ADMISSION

Pub. L. 109–162, title VIII, § 813(b), Jan. 5, 2006, 119 Stat. 3058, provided that:

''(1) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of State shall continue to have discretion to consent to an alien's reapplication for admission after a previous order of removal, deportation, or exclusion.

''(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994 [Pub. L. 103–322, title IV, see Tables for classification], cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) [8 U.S.C. 1229b(b)(2)] or 244(a)(3) [8 U.S.C. 1254(a)(3)] of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.''

DEFINITIONS

For definition of the term ''removable'' used in subsec. (d)(1), see section 1229a(e) of this title.

§ 1229c. Voluntary departure

(a) Certain conditions

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 1229a of this title or prior to the completion of such proceedings, if the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4)(B) of this title.

(2) Period

(A) In general

Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.

(B) Three-year pilot program waiver

During the period October 1, 2000, through September 30, 2003, and subject to subparagraphs (C) and (D)(ii), the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

(i) who was admitted to the United States as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) under the provisions of the visa waiver pilot program established pursuant to section 1187 of this title, seeks the waiver for the purpose of continuing to receive medical treatment in the United States from a physician associated with a health care facility, and submits to the Attorney General—

(I) a detailed diagnosis statement from the physician, which includes the treatment being sought and the expected time period the alien will be required to remain in the United States;

(II) a statement from the health care facility containing an assurance that the alien's treatment is not being paid through any Federal or State public health assistance, that the alien's account has no outstanding balance, and that such facility will notify the Service when the alien is released or treatment is terminated; and

(III) evidence of financial ability to support the alien's day-to-day expenses while in the United States (including the expenses of any family member described in clause (ii)) and evidence that any such alien or family member is not receiving any form of public assistance; or

(ii) who—

(I) is a spouse, parent, brother, sister, son, daughter, or other family member of a principal alien described in clause (i); and

(II) entered the United States accompanying, and with the same status as, such principal alien.

(C) Waiver limitations

(i) Waivers under subparagraph (B) may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph (B)(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph (B)(i) not more than one adult may be granted a waiver under subparagraph (B)(ii).

(II) Not more than two adults may be granted a waiver under subparagraph (B)(ii) in a case in which—

(aa) the principal alien described in subparagraph (B)(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

(D) Report to Congress; suspension of waiver authority

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under subparagraph (B) during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under subparagraph (B) shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

(3) Bond

The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(4) Treatment of aliens arriving in the United States

In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 1229a of this title are (or would otherwise be) initiated at the time of such alien's arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 1225(a)(4) of this title.

(b) At conclusion of proceedings

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

(3) Bond

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(c) Aliens not eligible

The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

(d) Civil penalty for failure to depart

(1) In general

Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title.

(2) Application of VAWA protections

The restrictions on relief under paragraph (1) shall not apply to relief under section 1229b or 1255 of this title on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 1229b(b)(2) of this title, or under section 1254(a)(3) of this title (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure.

(3) Notice of penalties

The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(e) Additional conditions

The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

(f) Judicial review

No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b) of this section, nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.

(June 27, 1952, ch. 477, title II, ch. 4, § 240B, as added Pub. L. 104–208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009–596; amended Pub. L. 106–406, § 2, Nov. 1, 2000, 114 Stat. 1755; Pub. L. 109–162, title VIII, § 812, Jan. 5, 2006, 119 Stat. 3057.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsec. (d)(2), was repealed by Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–162 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.''

2000—Subsec. (a)(2). Pub. L. 106–406 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.''

EFFECTIVE DATE

Section 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 an Effective Date of 1996 Amendments 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.

§ 1230. Records of admission

(a) The Attorney General shall cause to be filed, as a record of admission of each immigrant, the immigrant visa required by section 1201(e) of this title to be surrendered at the port of entry by the arriving alien to an immigration officer.

(b) The Attorney General shall cause to be filed such record of the admission into the United States of each immigrant admitted under section 1181(b) of this title and of each nonimmigrant as the Attorney General deems necessary for the enforcement of the immigration laws.

(June 27, 1952, ch. 477, title II, ch. 4, § 240C, formerly § 240, 66 Stat. 204; renumbered § 240C and amended Pub. L. 104–208, div. C, title III, §§ 304(a)(2), 308(f)(1)(K), Sept. 30, 1996, 110 Stat. 3009–587, 3009–621.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208, § 308(f)(1)(K), substituted ''admission'' for ''entry''.

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.

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.

§ 1231. Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the ''removal period'').

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a)[1] of title 42 and paragraph (2),[2] the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title[3] and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(b) Countries to which aliens may be removed

(1) Aliens arriving at the United States

Subject to paragraph (3)—

(A) In general

Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceedings under section 1229a of this title were initiated at the time of such alien's arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) Travel from contiguous territory

If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) Alternative countries

If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

(i) The country of which the alien is a citizen, subject, or national.

(ii) The country in which the alien was born.

(iii) The country in which the alien has a residence.

(iv) A country with a government that will accept the alien into the country's

[1] See References in Text note below.

[2] So in original. Probably should be "subparagraph (B),".

[3] So in original. Probably should be followed by a closing parenthesis.

territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) Other aliens

Subject to paragraph (3)—

(A) Selection of country by alien

Except as otherwise provided in this paragraph—

(i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and

(ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) Limitation on designation

An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) Disregarding designation

The Attorney General may disregard a designation under subparagraph (A)(i) if—

(i) the alien fails to designate a country promptly;

(ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;

(iii) the government of the country is not willing to accept the alien into the country; or

(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) Alternative country

If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(ii) is not willing to accept the alien into the country.

(E) Additional removal countries

If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

(i) The country from which the alien was admitted to the United States.

(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(iv) The country in which the alien was born.

(v) The country that had sovereignty over the alien's birthplace when the alien was born.

(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) Removal country when United States is at war

When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(ii) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) Restriction on removal to a country where alien's life or freedom would be threatened

(A) In general

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception

Subparagraph (A) does not apply to an alien deportable under section 1227(a)(4)(D) of this title or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's 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 is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) Sustaining burden of proof; credibility determinations

In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.

(c) Removal of aliens arriving at port of entry

(1) Vessels and aircraft

An alien arriving at a port of entry of the United States who is ordered removed either without a hearing under section 1225(b)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(A) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time, or

(B) the alien is a stowaway—

(i) who has been ordered removed in accordance with section 1225(a)(1) of this title,

(ii) who has requested asylum, and

(iii) whose application has not been adjudicated or whose asylum application has been denied but who has not exhausted all appeal rights.

(2) Stay of removal

(A) In general

The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that—

(i) immediate removal is not practicable or proper; or

(ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(B) Payment of detention costs

During the period an alien is detained because of a stay of removal under subparagraph (A)(ii), the Attorney General may pay from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''—

(i) the cost of maintenance of the alien; and

(ii) a witness fee of $1 a day.

(C) Release during stay

The Attorney General may release an alien whose removal is stayed under subparagraph (A)(ii) on—

(i) the alien's filing a bond of at least $500 with security approved by the Attorney General;

(ii) condition that the alien appear when required as a witness and for removal; and

(iii) other conditions the Attorney General may prescribe.

(3) Costs of detention and maintenance pending removal

(A) In general

Except as provided in subparagraph (B) and subsection (d)[4] of this section, an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

(i) while the alien is detained under subsection (d)(1) of this section, and

(ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

(I) subsection (d)(2)(A) or (d)(2)(B)(i) of this section,

(II) subsection (d)(2)(B)(ii) or (iii) of this section for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that such travel documents cannot be obtained from the country to which the stowaway is to be returned, or

(III) section 1225(b)(1)(B)(ii) of this title, for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

(B) Nonapplication

Subparagraph (A) shall not apply if—

(i) the alien is a crewmember;

(ii) the alien has an immigrant visa;

(iii) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was issued;

(iv) the alien has a reentry permit and applies for admission not later than 120

[4] So in original. Probably should be subsection ''(e)''.

days after the date of the alien's last inspection and admission;

(v)(I) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(II) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(III) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition relating to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(vi) the individual claims to be a national of the United States and has a United States passport.

(d) Requirements of persons providing transportation

(1) Removal at time of arrival

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States shall—

(A) receive an alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered removed under this part; and

(B) take the alien to the foreign country to which the alien is ordered removed.

(2) Alien stowaways

An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on board the vessel or aircraft, or at such place as the Attorney General shall designate, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except pursuant to regulations of the Attorney General temporarily—

(i) for medical treatment,

(ii) for detention of the stowaway by the Attorney General, or

(iii) for departure or removal of the stowaway; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

The Attorney General shall grant a timely request to remove the stowaway under subparagraph (C) on a vessel or aircraft other than that on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(3) Removal upon order

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be removed under this chapter.

(e) Payment of expenses of removal

(1) Costs of removal at time of arrival

In the case of an alien who is a stowaway or who is ordered removed either without a hearing under section 1225(a)(1)[5] or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival, the owner of the vessel or aircraft (if any) on which the alien arrived in the United States shall pay the transportation cost of removing the alien. If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(2) Costs of removal to port of removal for aliens admitted or permitted to land

In the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien to the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(3) Costs of removal from port of removal for aliens admitted or permitted to land

(A) Through appropriation

Except as provided in subparagraph (B), in the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien from the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(B) Through owner

(i) In general

In the case of an alien described in clause (ii), the cost of removal of the alien from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States.

(ii) Aliens described

An alien described in this clause is an alien who—

(I) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered removed within 5 years of the date of admission based on a ground that existed before or at the time of admission, or

(II) is an alien crewman permitted to land temporarily under section 1282 of this title and is ordered removed within 5 years of the date of landing.

[5] So in original. Probably should be ''1225(b)(1)''.

(C) Costs of removal of certain aliens granted voluntary departure

In the case of an alien who has been granted voluntary departure under section 1229c of this title and who is financially unable to depart at the alien's own expense and whose removal the Attorney General deems to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter.

(f) Aliens requiring personal care during removal

(1) In general

If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable person for that purpose who shall accompany and care for the alien until the alien arrives at the final destination.

(2) Costs

The costs of providing the service described in paragraph (1) shall be defrayed in the same manner as the expense of removing the accompanied alien is defrayed under this section.

(g) Places of detention

(1) In general

The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'', without regard to section 5 of title 41, amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(2) Detention facilities of the Immigration and Naturalization Service

Prior to initiating any project for the construction of any new detention facility for the Service, the Commissioner shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use.

(h) Statutory construction

Nothing in this section 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.

(i) Incarceration

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—

(A) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or

(B) take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the Attorney General.

(3) For purposes of this subsection, the term ''undocumented criminal alien'' means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;

(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

(4)(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated to carry out this subsection—

(A) $750,000,000 for fiscal year 2006;

(B) $850,000,000 for fiscal year 2007; and

(C) $950,000,000 for each of the fiscal years 2008 through 2011.

(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.

(June 27, 1952, ch. 477, title II, ch. 4, § 241, as added and amended Pub. L. 104–208, div. C, title III, §§ 305(a)(3), 306(a)(1), 328(a)(1), Sept. 30, 1996, 110 Stat. 3009–598, 3009–607, 3009–630; Pub. L. 107–273, div. C, title I, § 11014, Nov. 2, 2002, 116 Stat. 1824; Pub. L. 109–13, div. B, title I, § 101(c), May 11, 2005, 119 Stat. 303; Pub. L. 109–162, title XI, § 1196(a), (b), Jan. 5, 2006, 119 Stat. 3130.)

REFERENCES IN TEXT

Section 259 of title 42, referred to in subsec. (a)(4)(A), was repealed by Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221.

CODIFICATION

The text of subsec. (j) of section 1252 of this title, which was redesignated as subsec. (i) of this section by Pub. L. 104–208, § 306(a)(1), was based on section 242(j) of act June 27, 1952, ch. 477, title II, ch. 5, as added Sept. 13, 1994, Pub. L. 103–322, title II, § 20301(a), 108 Stat. 1823.

PRIOR PROVISIONS

A prior section 241 of act June 27, 1952, was renumbered section 237, and is classified to section 1227 of this title.

AMENDMENTS

2006—Subsec. (i)(5). Pub. L. 109–162, § 1196(a), substituted ''appropriated to carry out this subsection—'' for ''appropriated such sums as may be necessary to carry out this subsection in fiscal years 2003 and 2004.'' and added subpars. (A) to (C).

Subsec. (i)(6). Pub. L. 109–162, § 1196(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''To the extent of available appropriations, funds otherwise made available under this section with respect to a State (or political subdivision, including a municipality) for incarceration of an undocumented criminal alien may, at the discretion of the recipient of the funds, be used for the costs of imprisonment of such alien in a State, local, or municipal prison or jail.''

2005—Subsec. (b)(3)(C). Pub. L. 109–13 added subpar. (C).

2002—Subsec. (i)(5). Pub. L. 107–273 substituted ''in fiscal years 2003 and 2004'' for provisions which authorized specified amounts to be appropriated from the Violent Crime Reduction Trust Fund for fiscal years 1995 to 2002 as set out in subpars. (A) to (F).

1996—Subsec. (i). Pub. L. 104–208, § 306(a)(1), redesignated subsec. (j) of section 1252 of this title as subsec. (i) of this section. See Codification note above.

Subsec. (i)(3)(A). Pub. L. 104–208, § 328(a)(1)(A), substituted ''felony or two or more misdemeanors'' for ''felony and sentenced to a term of imprisonment''.

Subsec. (i)(6). Pub. L. 104–208, § 328(a)(1)(B), added par. (6).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–162, title XI, § 1196(d), as added by Pub. L. 109–271, § 8(n)(6), Aug. 12, 2006, 120 Stat. 768, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–13 effective May 11, 2005, and applicable to applications for asylum, withholding, or other relief from removal made on or after such date, see section 101(h)(2) of Pub. L. 109–13, set out as a note under section 1158 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 306(a)(1) of Pub. L. 104–208 applicable as provided under section 309 of Pub. L. 104–208 (see Effective Date note below), see section 306(c) of Pub. L. 104–208, as amended, set out as a note under section 1252 of this title.

Section 328(a)(2) of div. C of Pub. L. 104–208 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply beginning with fiscal year 1997.''

EFFECTIVE DATE

Section 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 an Effective Date of 1996 Amendments 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.

UNITED STATES POLICY WITH RESPECT TO INVOLUNTARY RETURN OF PERSONS IN DANGER OF SUBJECTION TO TORTURE

Pub. L. 105–277, div. G, subdiv. B, title XXII, § 2242, Oct. 21, 1998, 112 Stat. 2681–822, provided that:

''(a) POLICY.—It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

''(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act [Oct. 21, 1998], the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

''(c) EXCLUSION OF CERTAIN ALIENS.—To the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).

''(d) REVIEW AND CONSTRUCTION.—Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

''(e) AUTHORITY TO DETAIN.—Nothing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(f) DEFINITIONS.—

''(1) CONVENTION DEFINED.—In this section, the term 'Convention' means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

''(2) SAME TERMS AS IN THE CONVENTION.—Except as otherwise provided, the terms used in this section have the meanings given those terms in the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

PILOT PROGRAM ON USE OF CLOSED MILITARY BASES FOR DETENTION OF INADMISSIBLE OR DEPORTABLE ALIENS

Section 387 of div. C of Pub. L. 104–208 provided that:

''(a) ESTABLISHMENT.—The Attorney General and the Secretary of Defense shall establish one or more pilot programs for up to 2 years each to determine the feasibility of the use of military bases, available because of actions under a base closure law, as detention centers by the Immigration and Naturalization Service. In selecting real property at a military base for use as a

detention center under the pilot program, the Attorney General and the Secretary shall consult with the redevelopment authority established for the military base and give substantial deference to the redevelopment plan prepared for the military base.

''(b) REPORT.—Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, together with the Secretary of Defense, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate, and the Committees on Armed Services of the House of Representatives and of the Senate, on the feasibility of using military bases closed under a base closure law as detention centers by the Immigration and Naturalization Service.

''(c) DEFINITION.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Sept. 30, 1996].''

INTERIOR REPATRIATION PROGRAM

Section 388 of div. C of Pub. L. 104–208 provided that: ''Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the Secretary of State, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of the program of interior repatriation developed under section 437 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) [set out as a note below].''

Pub. L. 104–132, title IV, § 437, Apr. 24, 1996, 110 Stat. 1275, provided that: ''Not later than 180 days after the date of enactment of this Act [Apr. 24, 1996], the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.''

TERMINATION OF LIMITATION

Pub. L. 103–322, title II, § 20301(c), Sept. 13, 1994, 108 Stat. 1824, as amended by Pub. L. 104–208, div. C, title III, § 308(g)(5)(G), Sept. 30, 1996, 110 Stat. 3009–623, provided that notwithstanding subsec. (h)(5) [(i)(5)] of this section the requirements of subsec. (h) [i] of this section were not to be subject to the availability of appropriations on and after Oct. 1, 2004, prior to repeal by Pub. L. 109–162, title XI, § 1172(c), Jan. 5, 2006, 119 Stat. 3123.

PART V—ADJUSTMENT AND CHANGE OF STATUS

§ 1251. Transferred

CODIFICATION

Section 1251, act June 27, 1952, ch. 477, title II, ch. 5, § 241, 66 Stat. 204, as amended, which related to deportable aliens, was renumbered section 237 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 305(a)(2), Sept. 30, 1996, 110 Stat. 3009–598, and was transferred to section 1227 of this title.

§ 1251a. Repealed. Pub. L. 87–301, § 24(a)(3), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85–316, § 7, Sept. 11, 1957, 71 Stat. 640, excepted spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945, and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissible and the Attorney General consented. See section 1182(h) of this title.

§ 1252. Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

(A) Review relating to section 1225(b)(1)

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e) of this section, any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,

(ii) except as provided in subsection (e) of this section, a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e) of this section, procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) Treatment of certain decisions

No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 1229a(c)(1)(B) of this title.

(4) Claims under the United Nations Convention

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e) of this section.

(5) Exclusive means of review

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms ''judicial review'' and ''jurisdiction to review'' include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1) of this section, the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service

(A) In general

The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 1229a of this title was entered.

(B) Stay of order

Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) Alien's brief

The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 1158(a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availabil-

ity of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B) of this section, that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims

(A) Court determination if no issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) Limitation on determination

The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings

(A) In general

If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 1253(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality

If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation

If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 1253(a) of this title. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review

The defendant in a criminal proceeding under section 1253(a) of this title may not file a petition for review under subsection (a) of this section during the criminal proceeding.

(8) Construction

This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1231(a) of this title;

(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1253(g)[1] of this title; and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) Requirements for petition

A petition for review or for habeas corpus of an order of removal—

(1) shall attach a copy of such order, and

(2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(d) Review of final orders

A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

[1] See References in Text note below.

(e) Judicial review of orders under section 1225(b)(1)

(1) Limitations on relief

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

(3) Challenges on validity of the system

(A) In general

Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

(B) Deadlines for bringing actions

Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal

A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases

It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision

In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 1225(b)(1) of this title, or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section.

(5) Scope of inquiry

In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General

to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

(June 27, 1952, ch. 477, title II, ch. 5, § 242, 66 Stat. 208; Sept. 3, 1954, ch. 1263, § 17, 68 Stat. 1232; Pub. L. 97–116, § 18(h)(1), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 98–473, title II, § 220(b), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–603, title VII, § 701, Nov. 6, 1986, 100 Stat. 3445; Pub. L. 100–525, § 9(n), Oct. 24, 1988, 102 Stat. 2620; Pub. L. 100–690, title VII, § 7343(a), Nov. 18, 1988, 102 Stat. 4470; Pub. L. 101–649, title V, §§ 504(a), 545(e), title VI, § 603(b)(2), Nov. 29, 1990, 104 Stat. 5049, 5066, 5085; Pub. L. 102–232, title III, §§ 306(a)(4), (c)(7), 307(m)(2), 309(b)(9), Dec. 12, 1991, 105 Stat. 1751, 1753, 1757, 1759; Pub. L. 103–322, title II, § 20301(a), title XIII, § 130001(a), Sept. 13, 1994, 108 Stat. 1823, 2023; Pub. L. 103–416, title II, §§ 219(h), 224(b), Oct. 25, 1994, 108 Stat. 4317, 4324; Pub. L. 104–132, title IV, §§ 436(a), (b)(1), 438(a), 440(c), (h), Apr. 24, 1996, 110 Stat. 1275, 1277, 1279; Pub. L. 104–208, div. C, title III, §§ 306(a), (d), 308(g)(10)(H), 371(b)(6), Sept. 30, 1996, 110 Stat. 3009–607, 3009–612, 3009–625, 3009–645; Pub. L. 109–13, div. B, title I, §§ 101(e), (f), 106(a), May 11, 2005, 119 Stat. 305, 310.)

REFERENCES IN TEXT

Section 1253 of this title, referred to in subsec. (b)(8)(B), was amended generally by Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, no longer contains a subsec. (g). Provisions similar to those contained in former subsec. (g) of section 1253 are now contained in subsec. (d) of section 1253.

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsec. (e)(1)(B), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (f)(1), is div. C of Pub. L. 104–208, Sept. 30, 1996, 110 Stat. 3009–546. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1101 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(2)(A). Pub. L. 109–13, § 106(a)(1)(A)(i), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–13, § 106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Pub. L. 109–13, § 101(f)(2), inserted ''and regardless of whether the judgment, decision, or action is made in removal proceedings,'' before ''no court shall'' in introductory provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 109–13, § 101(f)(1), inserted ''or the Secretary of Homeland Security'' after ''Attorney General'' in two places.

Subsec. (a)(2)(C). Pub. L. 109–13, § 106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law''.

Subsec. (a)(2)(D). Pub. L. 109–13, § 106(a)(1)(A)(iii), added subpar. (D).

Subsec. (a)(4), (5). Pub. L. 109–13, § 106(a)(1)(B), added pars. (4) and (5).

Subsec. (b)(4). Pub. L. 109–13, § 101(e), added concluding provisions.

Subsec. (b)(9). Pub. L. 109–13, § 106(a)(2), inserted at end ''Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.''

Subsec. (g). Pub. L. 109–13, § 106(a)(3), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''notwithstanding any other provision of law''.

1996—Pub. L. 104–208, § 306(a)(2), amended section generally, substituting subsecs. (a) to (g) relating to judicial review of orders of removal for former subsecs. (a) to (i) relating to apprehension and deportation of aliens.

Subsec. (a)(2). Pub. L. 104–132, § 440(c)(2), struck out subpar. (B) which read as follows: ''The Attorney General may not release from custody any lawfully admitted alien who has been convicted of an aggravated felony, either before or after a determination of deportability, unless the alien demonstrates to the satisfaction of the Attorney General that such alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Pub. L. 104–132, § 440(c)(1)(C), struck out ''but subject to subparagraph (B)'' before '', the Attorney General shall not release''.

Pub. L. 104–132, § 440(c)(1)(B), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), substituted ''any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title'' for ''an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)''.

Pub. L. 104–132, § 440(c)(1)(A), substituted ''(2) The Attorney'' for ''(2)(A) The Attorney''.

Subsec. (b). Pub. L. 104–208, § 371(b)(6), substituted ''An immigration judge'' for ''A special inquiry officer'', ''an immigration judge'' for ''a special inquiry officer'' in two places, and ''immigration judge'' for ''special inquiry officer'' wherever appearing.

Pub. L. 104–132, § 436(a), inserted before period at end of second sentence ''; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien''.

Subsec. (c)(1). Pub. L. 104–132, § 440(h)(1), designated existing provisions of subsec. (c) as par. (1) and substituted ''Subject to paragraph (2), when a final order'' for ''When a final order''.

Subsec. (c)(2). Pub. L. 104–132, § 440(h)(2), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), added par. (2).

Subsec. (h). Pub. L. 104–132, § 438(a), amended subsec. (h) generally, restating prior single par. as par. (1) and adding pars. (2) and (3) authorizing the Attorney General to deport an alien prior to the completion of a sentence of imprisonment and requiring notice to deported aliens of penalties for reentry.

Subsec. (i). Pub. L. 104–132, § 436(b)(1), inserted at end ''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.''

Subsec. (j). Pub. L. 104–208, § 306(a)(1), redesignated subsec. (j) as subsec. (i) of section 1231 of this title.

1994—Subsec. (b). Pub. L. 103–416, § 224(b), substituted ''Except as provided in section 1252a(d) of this title, the'' for ''The'' in ninth sentence.

Subsec. (e). Pub. L. 103–322, § 130001(a), struck out ''paragraph (2), (3), or (4) of'' before ''section 1251(a) of this title'' and substituted ''shall be imprisoned not more than four years, or shall be imprisoned not more

than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1251(a) of this title.'' for ''shall be imprisoned not more than ten years''.

Subsec. (h). Pub. L. 103–416, § 219(h), substituted ''Parole,'' for ''Parole,,''.

Subsec. (j). Pub. L. 103–322, § 20301(a), added subsec. (j).

1991—Subsec. (a)(2)(B). Pub. L. 102–232, § 306(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Attorney General shall release from custody an alien who is lawfully admitted for permanent residence on bond or such other conditions as the Attorney General may prescribe if the Attorney General determines that the alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Subsec. (b). Pub. L. 102–232, § 306(c)(7), amended eighth sentence generally, substituting ''Such regulations shall include requirements that are consistent with section 1252b of this title and that provide that—'' and pars. (1) to (4) for ''Such regulations shall include requirements consistent with section 1252b of this title.''

Subsec. (e). Pub. L. 102–232, § 307(m)(2), substituted ''paragraph (2), (3), or (4)'' for ''paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Subsec. (h). Pub. L. 102–232, § 309(b)(9), inserted a comma after ''Parole''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 504(a), designated existing text as subpar. (A), substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction'' and ''Notwithstanding paragraph (1) or subsections (c) and (d) of this section but subject to subparagraph (B)'' for ''Notwithstanding subsection (a) of this section'', and added subpar. (B).

Subsec. (b). Pub. L. 101–649, § 603(b)(2)(A), substituted ''(2), (3), or (4)'' for ''(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Pub. L. 101–649, § 545(e), amended eighth sentence generally. Prior to amendment, eighth sentence read as follows: ''Such regulations shall include requirements that—

''(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

''(2) the alien 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;

''(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

''(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.''

Subsec. (e). Pub. L. 101–649, § 603(b)(2)(B), which directed the substitution of ''paragraph (2), (3) or (4)'' for ''paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

1988—Subsec. (a). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), any'' for ''Any'', redesignated cls. (1) to (3) as (A) to (C), respectively, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100–525 struck out ''or from September 23, 1950, whichever is the later,'' after ''from the date of the final order of the court,''.

1986—Subsec. (i). Pub. L. 99–603 added subsec. (i).

1984—Subsec. (h). Pub. L. 98–473, which directed that ''supervised release,'' be inserted after ''parole,'', was executed by inserting ''supervised release,'' after ''Parole,'' to reflect the probable intent of Congress.

1981—Subsec. (b). Pub. L. 97–116, § 18(h)(1)(A), substituted ''(18), or (19)'' for ''or (18)'' in provision following par. (4).

Subsec. (e). Pub. L. 97–116, § 18(h)(1)(B), substituted ''(18), or (19)'' for ''or (18)''.

1954—Subsec. (d). Act Sept. 3, 1954, struck out ''shall upon conviction be guilty of a felony.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, § 101(h)(3), (4), May 11, 2005, 119 Stat. 305, 306, provided that:

''(3) The amendment made by subsection (e) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

''(4) The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to all cases pending before any court on or after such date.''

Pub. L. 109–13, div. B, title I, § 106(b), May 11, 2005, 119 Stat. 311, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this division.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 306(c) of div. C of Pub. L. 104–208, as amended by Pub. L. 104–302, § 2(1), Oct. 11, 1996, 110 Stat. 3657, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) [amending this section and section 1231 of this title and repealing section 1105a of this title] shall apply as provided under section 309 [8 U.S.C. 1101 note], except that subsection (g) of section 242 of the Immigration and Nationality Act [8 U.S.C. 1252(g)] (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act [8 U.S.C. 1101 et seq.].

''(2) LIMITATION.—Paragraph (1) shall not be considered to invalidate or to require the reconsideration of any judgment or order entered under section 106 of the Immigration and Nationality Act [former 8 U.S.C. 1105a], as amended by section 440 of Public Law 104–132.''

[Section 2 of Pub. L. 104–302 provided that the amendment made by that section to section 306(c)(1) of Pub. L. 104–208, set out above, is effective Sept. 30, 1996.]

Section 306(d) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132.

Amendment by section 308(g)(10)(H) 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)(6) 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.

For delayed effective date of amendment by section 440(c) of Pub. L. 104–132, see section 303(b)(2) of Pub. L. 104–208, set out as a note under section 1226 of this title.

Section 436(b)(3) of Pub. L. 104–132 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 219(h) 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.

Section 224(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1252a of this title] shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act [Oct. 25, 1994].''

Section 20301(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(a)(4), (c)(7) 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.

Section 307(m)(2) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 504(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1226 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

Section 545(g) of Pub. L. 101–649, as amended by Pub. L. 104–208, div. C, title III, § 308(b)(6)(B), Sept. 30, 1996, 110 Stat. 3009–623, provided that:

''(1) NOTICE-RELATED PROVISIONS.—

''(A) Subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act [former 8 U.S.C. 1252b(a), (b), (c) and (e)(1)] (as inserted by the amendment made by subsection (a)), and the amendment made by subsection (e) [amending this section], shall be effective on a date specified by the Attorney General in the certification described in subparagraph (B), which date may not be earlier than 6 months after the date of such certification.

''(B) The Attorney General shall certify to the Congress when the central address file system (described in section 239(a)(4) [probably means 239(a)(3)] of the Immigration and Nationality Act) [8 U.S.C. 1229(a)(3)] has been established.

''(C) The Comptroller General shall submit to Congress, within 3 months after the date of the Attorney General's certification under subparagraph (B), a report on the adequacy of such system.

''(2) CERTAIN LIMITS ON DISCRETIONARY RELIEF; SANCTIONS FOR FRIVOLOUS BEHAVIOR.—Subsections (d), (e)(2), and (e)(3) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on the date of the enactment of this Act [Nov. 29, 1990].

''(3) LIMITS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR IN ASYLUM HEARING.—Subsection (e)(4) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on February 1, 1991.

''(4) CONSOLIDATION OF RELIEF IN JUDICIAL REVIEW.—The amendments made by subsection (b) [amending section 1105a of this title] shall apply to final orders of deportation entered on or after January 1, 1991.''

Amendment by section 603(b)(2) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7343(c) of Pub. L. 100–690 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1254 of this title] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

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.

REGULATIONS

Section 545(d) of Pub. L. 101–649 provided that: ''Within 6 months after the date of the enactment of this Act [Nov. 29, 1990], the Attorney General shall issue regulations with respect to—

''(1) the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions; and

''(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.''

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.

TRANSFER OF CASES

Pub. L. 109–13, div. B, title I, § 106(c), May 11, 2005, 119 Stat. 311, provided that: ''If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division [May 11, 2005], then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, div. C] (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply.''

TRANSITIONAL RULE CASES

Pub. L. 109–13, div. B, title I, § 106(d), May 11, 2005, 119 Stat. 311, provided that: ''A petition for review filed under former section 106(a) of the Immigration and Nationality Act [8 U.S.C. 1105a(a)] (as in effect before its repeal by section 306(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, div. C] (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Section 130008 of Pub. L. 103–322 provided that:

''(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, the Attorney General, in the discretion of the Attorney General, may accept, hold, administer, and utilize gifts of property and services (which may not include cash assistance) from State and local governments for the purpose of assisting the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanor or felony crimes under State or Federal law and who are either unlawfully within the United States or willing to submit to voluntary departure under safeguards. Any property acquired pursuant to this section shall be acquired in the name of the United States.

''(b) LIMITATION.—The Attorney General shall terminate or rescind the exercise of the authority under subsection (a) if the Attorney General determines that the exercise of such authority has resulted in discrimination by law enforcement officials on the basis of race, color, or national origin.''

§ 1252a. Transferred

CODIFICATION

Section 1252a, act June 27, 1952, ch. 477, title II, ch. 5, § 242A, as added Nov. 18, 1988, Pub. L. 100–690, title VII, § 7347(a), 102 Stat. 4471, as amended, which related to expedited removal of aliens convicted of committing aggravated felonies, was renumbered section 238 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 308(b)(5), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1228 of this title.

§ 1252b. Repealed. Pub. L. 104–208, div. C, title III, § 308(b)(6), Sept. 30, 1996, 110 Stat. 3009–615

Section, act June 27, 1952, ch. 477, title II, ch. 5, § 242B, as added Nov. 29, 1990, Pub. L. 101–649, title V, § 545(a), 104 Stat. 5061; amended Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(6), 105 Stat. 1753; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(i), 108 Stat. 4317; Sept. 30, 1996, Pub. L. 104–208, div. C, title III, § 371(b)(7), 110 Stat. 3009–645, related to deportation procedures. See sections 1229 and 1229a of this title.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1252c. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens

(a) In general

Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) Cooperation

The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) of this section is made available to such officials.

(Pub. L. 104–132, title IV, § 439, Apr. 24, 1996, 110 Stat. 1276.)

CODIFICATION

This section was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1253. Penalties related to removal

(a) Penalty for failure to depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 1227(a) of this title, who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order,

shall be fined under title 18, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1227(a) of this title), or both.

(2) Exception

It is not a violation of paragraph (1) to take any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody.

(3) Suspension

The court may for good cause suspend the sentence of an alien under this subsection and order the alien's release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as—

(A) the age, health, and period of detention of the alien;

(B) the effect of the alien's release upon the national security and public peace or safety;

(C) the likelihood of the alien's resuming or following a course of conduct which made or would make the alien deportable;

(D) the character of the efforts made by such alien himself and by representatives of the country or countries to which the alien's removal is directed to expedite the alien's departure from the United States;

(E) the reason for the inability of the Government of the United States to secure passports, other travel documents, or removal facilities from the country or countries to which the alien has been ordered removed; and

(F) the eligibility of the alien for discretionary relief under the immigration laws.

(b) Willful failure to comply with terms of release under supervision

An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Penalties relating to vessels and aircraft

(1) Civil penalties

(A) Failure to carry out certain orders

If the Attorney General is satisfied that a person has violated subsection (d) or (e) of section 1231 of this title, the person shall pay to the Commissioner the sum of $2,000 for each violation.

(B) Failure to remove alien stowaways

If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required under section 1231(d)(2) of this title, the person shall pay to the Commissioner the sum of $5,000 for each alien stowaway not removed.

(C) No compromise

The Attorney General may not compromise the amount of such penalty under this paragraph.

(2) Clearing vessels and aircraft

(A) Clearance before decision on liability

A vessel or aircraft may be granted clearance before a decision on liability is made under paragraph (1) only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner.

(B) Prohibition on clearance while penalty unpaid

A vessel or aircraft may not be granted clearance if a civil penalty imposed under paragraph (1) is not paid.

(d) Discontinuing granting visas to nationals of country denying or delaying accepting alien

On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

(June 27, 1952, ch. 477, title II, ch. 5, § 243, 66 Stat. 212; Pub. L. 89–236, § 11(f), Oct. 3, 1965, 79 Stat. 918; Pub. L. 95–549, title I, § 104, Oct. 30, 1978, 92 Stat. 2066; Pub. L. 96–212, title II, § 203(e), Mar. 17, 1980, 94 Stat. 107; Pub. L. 97–116, § 18(i), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 101–649, title V, § 515(a)(2), title VI, § 603(b)(3), Nov. 29, 1990, 104 Stat. 5053, 5085; Pub. L. 104–132, title IV, § 413(a), (f), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612.)

AMENDMENTS

1996—Pub. L. 104–208 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (h) relating to countries to which aliens were to be deported.

Subsec. (h)(2). Pub. L. 104–132, § 413(a), inserted at end "For purposes of subparagraph (D), an alien who is described in section 1251(a)(4)(B) of this title shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States."

Subsec. (h)(3). Pub. L. 104–132, § 413(f), added par. (3) which read as follows: "Notwithstanding any other provision of law, paragraph (1) shall apply to any alien if the Attorney General determines, in the discretion of the Attorney General, that—

"(A) such alien's life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion; and

"(B) the application of paragraph (1) to such alien is necessary to ensure compliance with the 1967 United Nations Protocol Relating to the Status of Refugees."

1990—Subsec. (h)(1). Pub. L. 101–649, § 603(b)(3), substituted "1251(a)(4)(D)" for "1251(a)(19)".

Subsec. (h)(2). Pub. L. 101–649, § 515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.

1981—Subsec. (a). Pub. L. 97–116 inserted a comma after "subject" in fourth sentence.

1980—Subsec. (h). Pub. L. 96–212 substituted provisions relating to deportation or return of an alien where the Attorney General determines that the return would threaten the life or freedom of the alien on account of race, religion, nationality, membership in a particular social group, or political opinion, for provisions relating to withholding of deportation for any necessary period of time where the Attorney General decides the alien would be subject to persecution on account of race, religion, or political opinion.

1978—Subsec. (h). Pub. L. 95–549 inserted ''(other than an alien described in section 1251(a) of this title)'' before ''within the United States''.

1965—Subsec. (h). Pub. L. 89–236 substituted ''persecution on account of race, religion, or political opinion'' for ''physical persecution''.

EFFECTIVE DATE OF 1996 AMENDMENTS

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.

Section 413(g) of Pub. L. 104–132 provided that: ''The amendments made by this section [amending this section and sections 1254, 1255, and 1259 of this title] shall take effect on the date of the enactment of this Act [Apr. 24, 1996] and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 515(a)(2) of Pub. L. 101–649 applicable to convictions entered before, on, or after Nov. 29, 1990, and to applications for withholding of deportation made on or after such date, see section 515(b)(2) of Pub. L. 101–649, as amended, set out as a note under section 1158 of this title.

Amendment by section 603(b)(3) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 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 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 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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS

Pub. L. 99–603, title III, § 315(c), Nov. 6, 1986, 100 Stat. 3440, as amended by Pub. L. 104–208, div. C, title III, § 308(g)(7)(C)(i), Sept. 30, 1996, 110 Stat. 3009–623, provided that: ''It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)).''

§ 1254. Repealed. Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615

Section, acts June 27, 1952, ch. 477, title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub. L. 87–885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89–236, § 12, 79 Stat. 918; Oct. 20, 1976, Pub. L. 94–571, § 7(f), 90 Stat. 2706; Oct. 30, 1978, Pub. L. 95–549, title I, § 105, 92 Stat. 2066; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(d), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97–116, §§ 9, 18(h)(2), (j), 95 Stat. 1616, 1620; Nov. 6, 1986, Pub. L. 99–603, title III, § 315(b), 100 Stat. 3439; Oct. 24, 1988, Pub. L. 100–525, § 2(q)(1), 102 Stat. 2613; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7343(b), 102 Stat. 4470; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(e)(2), title VI, § 603(b)(3), (4), 104 Stat. 5011, 5085; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(m)(1), 105 Stat. 1757; Sept. 13, 1994, Pub. L. 103–322, title IV, § 40703, 108 Stat. 1955; Apr. 24, 1996, Pub. L. 104–132, title IV, § 413(b), (c), 110 Stat. 1269, related to suspension of deportation. See sections 1229b and 1229c of this title.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1254a. Temporary protected status

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an ''employment authorized'' endorsement or other appropriate work permit.

(2) Duration of work authorization

Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) Notice

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b) of this section, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b) of this section, an alien (who is a national of such state) is in a removal proceeding under this subchapter, the Attorney General shall promptly notify the

alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) of this section has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3) of this section, but shall not be effective earlier than 60 days

after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) Information concerning protected status at time of designations

At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) Review

(A) Designations

There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) Application to individuals

The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) Registration fee

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an ''employment authorized'' endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), 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; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (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 marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3) of this section, the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annu-

ally, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B) of this section, such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to cancellation of removal

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1229b(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) of this section and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3) of this section.

(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

(June 27, 1952, ch. 477, title II, ch. 5, § 244, formerly § 244A, as added and amended Pub. L. 101–649, title III, § 302(a), title VI, § 603(a)(24), Nov. 29, 1990, 104 Stat. 5030, 5084; Pub. L. 102–232, title III, §§ 304(b), 307(*l*)(5), Dec. 12, 1991, 105 Stat. 1749, 1756; Pub. L. 103–416, title II, § 219(j), (z)(2), Oct. 25, 1994, 108 Stat. 4317, 4318; renumbered § 244 and amended Pub. L. 104–208, div. C, title III, § 308(b)(7), (e)(1)(G), (11), (g)(7)(E)(i), (8)(A)(i), Sept. 30, 1996, 110 Stat. 3009–615, 3009–619, 3009–620, 3009–624.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–208, § 308(e)(11), substituted ''remove'' for ''deport''.

Subsec. (a)(3)(B), (C). Pub. L. 104–208, § 308(e)(1)(G), substituted ''removal'' for ''deportation''.

Subsec. (b)(5)(B). Pub. L. 104–208, § 308(e)(1)(G), substituted ''removal'' for ''deportation''.

Subsec. (c)(2)(B)(ii). Pub. L. 104–208, § 308(g)(7)(E)(i), substituted ''section 1158(b)(2)(A)'' for ''section 1253(h)(2)''.

Subsec. (e). Pub. L. 104–208, § 308(g)(8)(A)(i), substituted ''section 1229b(a)'' for ''section 1254(a)''.

Pub. L. 104–208, § 308(e)(11), amended heading.

1994—Subsec. (c)(1)(B). Pub. L. 103–416, § 219(z)(2), made technical correction to directory language of Pub. L. 102–232, § 304(b)(2). See 1991 Amendment note below.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 103–416, § 219(j), substituted ''paragraphs'' for ''Paragraphs'' and ''and (3)(E)'' for ''or (3)(E)''.

1991—Subsec. (a)(1). Pub. L. 102–232, § 304(b)(1), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(A). Pub. L. 102–232, § 304(b)(3), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(B). Pub. L. 102–232, § 304(b)(2), as amended by Pub. L. 103–416, § 219(z)(2), inserted provisions requiring separate fee of aliens registered pursuant to designation made after July 17, 1991, and directing that all fees be credited to appropriation to be used to carry out this section.

Subsec. (c)(2)(A)(iii)(I). Pub. L. 102–232, § 307(*l*)(5)(A), substituted ''paragraphs (2)(A) and (2)(B)'' for ''paragraphs (9) and (10)''.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 102–232, § 307(*l*)(5)(B), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''paragraphs (3) (relating to security and related grounds).''

1990—Subsec. (c)(2)(A)(i). Pub. L. 101–649, § 603(a)(24)(A), which directed the substitution of ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)'', was executed by making the substitution for ''(14), (15), (20), (21), (25), and (32)'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(I). Pub. L. 101–649, § 603(a)(24)(B), which directed the substitution of ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101–649, § 603(a)(24)(C), substituted ''(2)(C)'' for ''(23)'' and inserted ''or'' at end.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 101–649, § 603(a)(24)(D), which directed the substitution of ''(3) (relating to security and related grounds)'' for ''(27) and (29) (relating to national security)'', and a period for ''; or'', was executed by substituting ''(3) (relating to security and related grounds)'' for ''(27) and (29) of such section (relating to national security)'', and a period for '', or'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(IV). Pub. L. 101–649, § 603(a)(24)(E), struck out subcl. (IV) which referred to par. (33).

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 1994 AMENDMENT

Amendment by section 219(j) 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.

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(2) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 304(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.

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

Amendment by section 603(a)(24) 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.

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.

LIMITATION ON SUSPENSION OF DEPORTATION

The Attorney General may not suspend deportation and adjust status under this section of more than 4,000 aliens in any fiscal year, beginning after Sept. 30, 1996, regardless of when aliens applied for such suspension and adjustment, see section 309(c)(7) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

ALIENS AUTHORIZED TO TRAVEL ABROAD TEMPORARILY

Section 304(c) of Pub. L. 102–232, as amended by Pub. L. 104–208, div. C, title III, §308(g)(1), (8)(A)(ii), (C), Sept. 30, 1996, 110 Stat. 3009–622, 3009–624, provided that:

''(1) In the case of an alien described in paragraph (2) whom the Attorney General authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization—

''(A) the alien shall be inspected and admitted in the same immigration status the alien had at the time of departure if—

''(i) in the case of an alien described in paragraph (2)(A), the alien is found not to be excludable on a ground of exclusion referred to in section 301(a)(1) of the Immigration Act of 1990 [Pub. L. 101–649, set out as a note under section 1255a of this title], or

''(ii) in the case of an alien described in paragraph (2)(B), the alien is found not to be excludable on a ground of exclusion referred to in section 244(c)(2)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1254a(c)(2)(A)(iii)]; and

''(B) the alien shall not be considered, by reason of such authorized departure, to have failed to maintain continuous physical presence in the United States for purposes of section 240A(a) of the Immigration and Nationality Act [8 U.S.C. 1229b(a)] if the absence meets the requirements of section 240A(b)(2) of such Act.

''(2) Aliens described in this paragraph are the following:

''(A) Aliens provided benefits under section 301 of the Immigration Act of 1990 (relating to family unity).

''(B) Aliens provided temporary protected status under section 244 of the Immigration and Nationality Act, including aliens provided such status under section 303 of the Immigration Act of 1990 [Pub. L. 101–649, set out below].''

EFFECT ON EXECUTIVE ORDER 12711

Section 302(c) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §304(a), Dec. 12, 1991, 105 Stat. 1749; Pub. L. 103–416, title II, §219(y), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 104–208, div. C, title III, §308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622, provided that: ''Notwithstanding subsection (g) of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a(g)] (inserted by the amendment made by subsection (a)), such section shall not supersede or affect Executive Order 12711 (April 11, 1990 [8 U.S.C. 1101 note], relating to policy implementation with respect to nationals of the People's Republic of China).''

SPECIAL TEMPORARY PROTECTED STATUS FOR SALVADORANS

Section 303 of Pub. L. 101–649, as amended by Pub. L. 102–65, §1, July 2, 1991, 105 Stat. 322; Pub. L. 104–208, div. C, title III, §308(g)(1), (6)(A), Sept. 30, 1996, 110 Stat. 3009–622, 3009–623, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—El Salvador is hereby designated under section 244(b) of the Immigration and Nationality Act [8 U.S.C. 1254a(b)], subject to the provisions of this section.

''(2) PERIOD OF DESIGNATION.—Such designation shall take effect on the date of the enactment of this section [Nov. 29, 1990] and shall remain in effect until the end of the 18-month period beginning January 1, 1991.

''(b) ALIENS ELIGIBLE.—

''(1) IN GENERAL.—In applying section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] pursuant to the designation under this section, subject to section 244(c)(3) of such Act, an alien who is a national of El Salvador meets the requirements of section 244(c)(1) of such Act only if—

''(A) the alien has been continuously physically present in the United States since September 19, 1990;

''(B) the alien is admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244(c)(2)(B) of such Act; and

''(C) in a manner which the Attorney General shall establish, the alien registers for temporary protected status under this section during the registration period beginning January 1, 1991, and ending October 31, 1991.

''(2) REGISTRATION FEE.—The Attorney General shall require payment of a reasonable fee as a condition of registering an alien under paragraph (1)(C) (including providing an alien with an 'employment authorized' endorsement or other appropriate work permit under this section). The amount of the fee shall be sufficient to cover the costs of administration of this section. Notwithstanding section 3302 of title 31, United States Code, all such registration fees collected shall be credited to the appropriation to be used in carrying out this section.

''(c) APPLICATION OF CERTAIN PROVISIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, the provisions of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] (including subsection (h) thereof) shall apply to El Salvador (and aliens provided temporary protected status) under this section in the same manner as they apply to a foreign state designated (and aliens provided temporary protected status) under such section.

''(2) PROVISIONS NOT APPLICABLE.—Subsections (b)(1), (b)(2), (b)(3), (c)(1), (c)(4), (d)(3), and (i) of such section 244 shall not apply under this section.

''(3) 6-MONTH PERIOD OF REGISTRATION AND WORK AUTHORIZATION.—Notwithstanding section 244(a)(2) of the Immigration and Nationality Act, the work authorization provided under this section shall be effective for periods of 6 months. In applying section 244(c)(3)(C) of such Act under this section, 'semiannually, at the end of each 6-month period' shall be substituted for 'annually, at the end of each 12-month period' and, notwithstanding section 244(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.

''(4) REENTRY PERMITTED AFTER DEPARTURE FOR EMERGENCY CIRCUMSTANCES.—In applying section 244(f)(3) of the Immigration and Nationality Act under this section, the Attorney General shall provide for advance parole in the case of an alien provided special temporary protected status under this section if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to depart for a brief, temporary trip abroad.

''(d) ENFORCEMENT OF REQUIREMENT TO DEPART AT TIME OF TERMINATION OF DESIGNATION.—

''(1) SHOW CAUSE ORDER AT TIME OF FINAL REGISTRATION.—At the registration occurring under this section closest to the date of termination of the designation of El Salvador under subsection (a), the Immi-

gration and Naturalization Service shall serve on the alien granted temporary protected status an order to show cause that establishes a date for deportation proceedings which is after the date of such termination of designation. If El Salvador is subsequently designated under section 244(b) of the Immigration and Nationality Act [8 U.S.C. 1254a], the Service shall cancel such orders.

''(2) SANCTION FOR FAILURE TO APPEAR.—If an alien is provided an order to show cause under paragraph (1) and fails to appear at such proceedings, except for exceptional circumstances, the alien may be deported in absentia under section 240(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1229a(b)(5)] (inserted by section 545(a) of this Act) and certain discretionary forms of relief are no longer available to the alien pursuant to such section.''

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a) of this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) subject to subsection (k) of this section, an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title,[1] (6) an alien who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(h)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a) of this section.

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)[2] of section 1184 of this title with respect to the alien spouse or alien son or daughter. In accord-

[1] So in original. The comma probably should be a semicolon.

[2] See References in Text note below.

ance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States.

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

(1) such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), and (7)(A) of section 1182(a) of this title shall not apply, and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i) Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of—

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling $1,000 as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3)(A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (*o*) of section 1356 of this title.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under section 1356(r) of this title, except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title.

(j) Adjustment to permanent resident status

(1) If, in the opinion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(i) of this title has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(2) If, in the sole discretion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(ii) of this title has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to—

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 2708(a) of title 22,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(3) Upon the approval of adjustment of status under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 1151(d) and 1153(b)(4) of this title for the fiscal year then current.

(k) Inapplicability of certain provisions for certain employment-based immigrants

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 1153(b) of this title (or, in the case of an alien who is an immigrant described in section 1101(a)(27)(C) of this title, under section 1153(b)(4) of this title) may adjust status pursuant to subsection (a) of this section and notwithstanding subsection (c)(2), (c)(7), and (c)(8) of this section, if—

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

***(l)* Adjustment of status for victims of trafficking**

(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General,,[3] a nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 1101(a)(15)(T)(i) of this title, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;[4]

(B) has, throughout such period, been a person of good moral character, and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States,

the Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General, may adjust the status of the alien (and any person admitted under section 1101(a)(15)(T)(ii) of this title as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 1101(a)(15)(T) of this title who is inadmissible to the United States by reason of a ground that has not been waived under section 1182 of this title, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's[5] discretion, may waive the application of—

(A) paragraphs (1) and (4) of section 1182(a) of this title; and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10(E)),[6] if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

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[3] So in original.

[4] So in original. The semicolon probably should be a comma.

[5] So in original. Probably should be ''Secretary's''.

[6] So in original. Probably should be ''(10)(E)),''.

(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(m) Adjustment of status for victims of crimes against women

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title, unless the Attorney General determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if—

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(June 27, 1952, ch. 477, title II, ch. 5, § 245, 66 Stat. 217; Pub. L. 85–700, § 1, Aug. 21, 1958, 72 Stat. 699; Pub. L. 86–648, § 10, July 14, 1960, 74 Stat. 505; Pub. L. 89–236, § 13, Oct. 3, 1965, 79 Stat. 918; Pub. L. 94–571, § 6, Oct. 20, 1976, 90 Stat. 2705; Pub. L. 97–116, § 5(d)(2), Dec. 29, 1981, 95 Stat. 1614; Pub. L. 99–603, title I, § 117, title III, § 313(c), Nov. 6, 1986, 100 Stat. 3384, 3438; Pub. L. 99–639, §§ 2(e), 3(b), 5(a), Nov. 10, 1986, 100 Stat. 3542, 3543; Pub. L. 100–525, §§ 2(f)(1), (p)(3), 7(b), Oct. 24, 1988, 102 Stat. 2611, 2613, 2616; Pub. L. 101–649, title I, §§ 121(b)(4), 162(e)(3), title VII, § 702(a), Nov. 29, 1990, 104 Stat. 5011, 5086; Pub. L. 102–110, § 2(c), Oct. 1, 1991, 105 Stat. 556; Pub. L. 102–232, title III, §§ 302(d)(2), (e)(7), 308(a), Dec. 12, 1991, 105 Stat. 1744, 1746, 1757; Pub. L. 103–317, title V, § 506(b), Aug. 26, 1994, 108 Stat. 1765; Pub. L. 103–322, title XIII, § 130003(c), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 103–416, title II, § 219(k), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–132, title IV, § 413(d), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, §§ 308(f)(1)(O), (2)(C), (g)(10)(B), 375, 376(a), title VI, § 671(a)(4)(A), (5), Sept. 30, 1996, 110 Stat. 3009–621, 3009–625, 3009–648, 3009–721; Pub. L. 105–119, title I, §§ 110(3), 111(a), (c), Nov. 26, 1997, 111 Stat. 2458; Pub. L. 106–386, div. A, § 107(f), div. B, title V, §§ 1506(a)(1), 1513(f), Oct. 28, 2000, 114 Stat. 1479, 1527, 1536; Pub. L. 106–553, § 1(a)(2) [title XI, §§ 1102(c), (d)(2), 1103(c)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–143 to 2762A–145; Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502], Dec. 21, 2000, 114 Stat. 2763, 2763A–324; Pub. L. 108–193, §§ 4(b)(3), 8(a)(4), Dec. 19, 2003, 117 Stat. 2879, 2886; Pub. L. 109–162, title VIII, § 803, Jan. 5, 2006, 119 Stat. 3054; Pub. L. 109–271, § 6(f), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

Subsection (p) of section 1184 of this title, referred to in subsec. (e)(3), was redesignated subsec. (r) of section 1184 by Pub. L. 108–193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (i)(1), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of this title.

Section 301 of the Immigration Act of 1990, referred to in subsec. (i)(1)(iii), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–271, § 6(f)(1), substituted "as a VAWA self-petitioner" for "under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154(a)(1) of this title or".

Subsec. (c). Pub. L. 109–271, § 6(f)(2), substituted "as a VAWA self-petitioner" for "under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title".

Subsec. (*l*)(1). Pub. L. 109–162, § 803(a)(1)(A), substituted "Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General," for "Attorney General" in two places.

Subsec. (*l*)(1)(A), Pub. L. 109–162, § 803(a)(1)(B), inserted at end "or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;".

Subsec. (*l*)(2). Pub. L. 109–162, § 803(a)(2), substituted "Secretary of Homeland Security" for "Attorney General" in two places.

Subsec. (*l*)(5). Pub. L. 109–162, § 803(a)(3), substituted "Secretary of Homeland Security" for "Attorney General".

Subsec. (m)(1). Pub. L. 109–162, § 803(b)(1)(A), substituted "Secretary of Homeland Security may adjust" for "Attorney General may adjust" in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 109–162, § 803(b)(1)(B), substituted "Secretary of Homeland Security" for "Attorney General".

Subsec. (m)(3). Pub. L. 109–162, § 803(b)(2), substituted "Secretary of Homeland Security may adjust" for "Attorney General may adjust" and "Secretary considers" for "Attorney General considers".

Subsec. (m)(4). Pub. L. 109–162, § 803(b)(3), substituted "Secretary of Homeland Security" for "Attorney General".

2003—Subsec. (*l*). Pub. L. 108–193, § 8(a)(4)(B), redesignated subsec. (*l*), relating to adjustment of status for victims of crimes against women, as (m).

Subsec. (*l*)(1). Pub. L. 108–193, § 4(b)(3)(A), in concluding provisions, substituted ''admitted under section 1101(a)(15)(T)(ii) of this title'' for ''admitted under that section'' and inserted ''sibling,'' after ''parent,''.

Subsec. (*l*)(2). Pub. L. 108–193, § 8(a)(4)(A), redesignated par. (2), relating to alien's maintenance of continuous physical presence, as (3).

Subsec. (*l*)(3). Pub. L. 108–193, § 8(a)(4)(A), redesignated par. (2), relating to alien's maintenance of continuous physical presence, as (3). Former par. (3) redesignated (4).

Subsec. (*l*)(3)(B). Pub. L. 108–193, § 4(b)(3)(B), inserted ''siblings,'' after ''daughters,''.

Subsec. (*l*)(4), (5). Pub. L. 108–193, § 8(a)(4)(A), redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (m). Pub. L. 108–193, § 8(a)(4)(B), redesignated subsec. (*l*), relating to adjustment of status for victims of crimes against women, as (m).

2000—Subsec. (a). Pub. L. 106–386, § 1506(a)(1)(A), which directed the insertion of ''or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154(a)(1) of this title or'' after ''into the United States.'', was executed by making the insertion after ''into the United States'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 106–386, § 1506(a)(1)(B), substituted ''Other than an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title, subsection (a) of this section shall not be applicable to'' for ''Subsection (a) of this section shall not be applicable to''.

Subsec. (d). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(b)(2)], struck out ''or (m)'' after ''under subsection (a)'' in two places.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(3)(A)], struck out ''(relating to an alien fiancee or fiance or the minor child of such alien)'' before ''except to that of an alien''.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(2)(A)], substituted ''under subsection (a) or (m) of this section,'' for ''under subsection (a) of this section,'' in two places.

Subsec. (e)(1). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(b)(2)], struck out ''or (m)'' after ''under subsection (a)''.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(2)(B)], substituted ''subsection (a) or (m)'' for ''subsection (a)''.

Subsec. (e)(3). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(3)(B)], substituted ''section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title'' for ''section 1154(a) or 1184(d) of this title''.

Subsec. (f). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(b)(2)], struck out ''or (m)'' after ''under subsection (a)''.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(2)(A)], substituted ''under subsection (a) or (m) of this section,'' for ''under subsection (a) of this section,''.

Subsec. (i)(1)(B)(i). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(a)(1)(B)], substituted ''April 30, 2001'' for ''January 14, 1998''.

Subsec. (i)(1)(C). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(a)(1)(A), (C), (D)], added subpar. (C).

Subsec. (i)(3)(B). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(a)(2)], inserted before period at end '', except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title''.

Subsec. (*l*). Pub. L. 106–386, § 1513(f), added subsec. (*l*) relating to adjustment of status for victims of crimes against women.

Pub. L. 106–386, § 107(f), added subsec. (*l*) relating to adjustment of status for victims of trafficking.

Subsec. (m). Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502(b)(1)], struck out subsec. (m), which related to adjustment of status of nonimmigrant described in section 1101(a)(15)(V) of this title who was determined to have been physically present in the United States at any time during period beginning July 1, 2000, and ending Oct. 1, 2000.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(c)], added subsec. (m).

1997—Subsec. (c)(2). Pub. L. 105–119, § 111(c)(1), substituted ''(2) subject to subsection (k) of this section, an alien (other than'' for ''(2) an alien (other than''.

Subsec. (i)(1). Pub. L. 105–119, § 111(a), substituted first sentence for prior first sentence which read as follows: ''Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States who—

''(A) entered the United States without inspection; or

''(B) is within one of the classes enumerated in subsection (c) of this section,

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence.''

Subsec. (i)(3)(B). Pub. L. 105–119, § 110(3), substituted ''Breached Bond/Detention Fund established under section 1356(r) of this title'' for ''Immigration Detention Account established under section 1356(s) of this title''.

Subsec. (k). Pub. L. 105–119, § 111(c)(2), added subsec. (k).

1996—Subsec. (c)(6). Pub. L. 104–208, § 308(g)(10)(B), substituted ''section 1227(a)(4)(B)'' for ''section 1251(a)(4)(B)''.

Pub. L. 104–132 added cl. (6).

Subsec. (c)(7), (8). Pub. L. 104–208, § 375, added cls. (7) and (8).

Subsec. (e)(2). Pub. L. 104–208, § 308(f)(2)(C), substituted ''be admitted'' for ''enter''.

Subsec. (e)(3). Pub. L. 104–208, § 308(f)(1)(O), substituted ''admission'' for ''entry''.

Subsec. (i). Pub. L. 104–208, § 671(a)(4)(A), redesignated subsec. (i), relating to adjustment to permanent resident status, as (j).

Subsec. (i)(1). Pub. L. 104–208, § 376(a)(1), substituted ''$1,000'' for ''five times the fee required for the processing of applications under this section''.

Subsec. (i)(3). Pub. L. 104–208, § 376(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Sums remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in sections 1356(m), (n), and (*o*) of this title.''

Subsec. (j). Pub. L. 104–208, § 671(a)(4)(A), redesignated subsec. (i), relating to adjustment to permanent resident status, as (j).

Subsec. (j)(3). Pub. L. 104–208, § 671(a)(5), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) or (2)''.

1994—Subsec. (c)(5). Pub. L. 103–322, § 130003(c)(2), added cl. (5).

Subsec. (h)(2)(B). Pub. L. 103–416 substituted ''and (3)(E)'' for ''or (3)(E)''.

Subsec. (i). Pub. L. 103–322, § 130003(c)(1), added subsec. (i) relating to adjustment to permanent resident status.

Pub. L. 103–317, § 506(b), added subsec. (i) relating to adjustment in status of certain aliens physically present in United States.

1991—Subsec. (b). Pub. L. 102–232, § 302(e)(7), substituted ''sections 1152 and 1153'' for ''sections 1151(a)'' and ''for the fiscal year then current'' for ''for the succeeding fiscal year''.

Subsec. (c)(2). Pub. L. 102–232, § 302(d)(2)(A), inserted ''(J),'' after ''(I),''.

Pub. L. 102–110, § 2(c)(1), substituted '', (I), or (K)'' for ''or (I)''.

Subsec. (e)(3). Pub. L. 102–232, § 308(a), substituted ''section 1154(g)'' for ''section 1154(h)''.

Subsec. (g). Pub. L. 102–110, § 2(c)(2), added subsec. (g).

Subsec. (h). Pub. L. 102–232, § 302(d)(2)(B), added subsec. (h).

1990—Subsec. (b). Pub. L. 101–649, § 162(e)(3), struck out ''or nonpreference'' after ''number of the pref-

erence'' and substituted ''1151(a)'' for ''1152(e) or 1153(a)'' and ''succeeding fiscal year'' for ''fiscal year then current''.

Subsec. (e)(1). Pub. L. 101–649, §702(a)(1), substituted ''Except as provided in paragraph (3), an alien'' for ''An alien''.

Subsec. (e)(3). Pub. L. 101–649, §702(a)(2), added par. (3).

Subsec. (f). Pub. L. 101–649, §121(b)(4), added subsec. (f).

1988—Subsec. (c)(2). Pub. L. 100–525, §2(f)(1), substituted ''1101(a)(27)(H) or (I)'' for ''1101(a)(27)(H)'', inserted ''or'' after ''no fault of his own'', and substituted ''in unlawful'' for ''not in legal'' and ''lawful status'' for ''legal status''.

Subsec. (c)(4). Pub. L. 100–525, §2(p)(3), made technical correction to Pub. L. 99–603, §313(c). See 1986 Amendment note below.

Subsec. (d). Pub. L. 100–525, §7(b), amended Pub. L. 99–639, §3(b). See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–639, §5(a)(1), substituted ''Subsection (a) of this section'' for ''The provisions of this section''.

Subsec. (c)(2). Pub. L. 99–603, §117, inserted ''or who is not in legal immigration status on the date of filing the application for adjustment or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States''.

Subsec. (c)(4). Pub. L. 99–603, §313(c), as amended by Pub. L. 100–525, §2(p)(3), added cl. (4).

Subsec. (d). Pub. L. 99–639, §3(b), as amended by Pub. L. 100–525, §7(b), inserted ''The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title (relating to an alien fiancee or fiance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.''

Pub. L. 99–639, §2(e), added subsec. (d).

Subsec. (e). Pub. L. 99–639, §5(a)(2), added subsec. (e).

1981—Subsec. (c)(2). Pub. L. 97–116 inserted ''or a special immigrant described in section 1101(a)(27)(H) of this title'' after ''section 1151(b) of this title''.

1976—Subsec. (a). Pub. L. 94–571 struck out '', other than alien crewman,'' after ''status of an alien'' and substituted ''filed'' for ''approved''.

Subsec. (b). Pub. L. 94–571 inserted reference to section 1152(e) of this title and struck out comma after ''chargeable''.

Subsec. (c). Pub. L. 94–571 substituted provision making the section inapplicable to alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa for provision making the section inapplicable to natives of contiguous country or adjacent island.

1965—Subsec. (b). Pub. L. 89–236, §13(a), struck out reference to quota area to which the alien is chargeable under section 1152 of this title and substituted reference to number of preference or nonpreference visas authorized to be issued under section 1153(a) of this title within the class to which the alien is chargeable.

Subsec. (c). Pub. L. 89–236, §13(b), substituted ''any country of the Western Hemisphere'' for ''any country contiguous to the United States''.

1960—Subsec. (a). Pub. L. 86–648 substituted ''alien, other than an alien crewman, who was inspected and admitted or paroled into the United States'' for ''alien who was admitted to the United States as a bona fide nonimmigrant'', struck out former cl. (3) which read ''an immigrant visa was immediately available to him at the time of his application'', redesignated cl. (4) as (3), and struck out concluding sentence which read as follows: ''A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list.''

1958—Pub. L. 85–700 among other changes, substituted provisions allowing adjustment of status of alien who was admitted as a bona fide nonimmigrant to that of an alien lawfully admitted for permanent residence, for provisions allowing adjustment of status of alien who was lawfully admitted as a bona fide nonimmigrant and continued to maintain that status, to that of a permanent resident either as a quota immigrant or as a nonquota immigrant claiming nonquota status as the spouse or child of a citizen under certain specified conditions, by striking out provision terminating nonimmigrant quota status of alien who files application for adjustment of status, and by adding subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1506], Dec. 21, 2000, 114 Stat. 2763, 2763A–328, provided that: ''This title [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 1101 of this title] shall take effect as if included in the enactment of the Legal Immigration Family Equity Act [see Short Title of 2000 Amendments note set out under section 1101 of this title].''

Amendment by section 1(a)(2) [title XI, §1102(c), (d)(2)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to an alien who is the beneficiary of a classification petition filed under section 1154 of this title on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(e)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Amendment by section 1(a)(2) [title XI, §1103(c)(3)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to an alien who is the beneficiary of a classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, §1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Pub. L. 106–386, div. B, title V, §1506(a)(2), Oct. 28, 2000, 114 Stat. 1527, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to applications for adjustment of status pending on or made on or after January 14, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(f)(1)(O), (2)(C), (g)(10)(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 376(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1356 of this title] shall apply to applications made on or after the end of the 90-day period beginning on the date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 671(a)(4)(A), (5) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by Pub. L. 104–132 effective Apr. 24, 1996, and applicable to applications filed before, on, or after such date if final action not yet taken on them before such date see section 413(g) of Pub. L. 104–132, set out as a note under section 1253 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. 103–317 effective Oct. 1, 1994, see section 506(c) of Pub. L. 103–317, as amended, set out as an Effective and Termination Dates of 1994 Amendment note under section 1182 of this title.

EFFECTIVE DATE OF 1991 AMENDMENTS

Amendment by section 302(d)(2), (e)(7) 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.

Section 308(a) of Pub. L. 102–232 provided that the amendment made by that section is effective Oct. 1, 1991.

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 121(b)(4), 162(e)(3) of 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.

Amendment by section 702(a) of Pub. L. 101–649 applicable to marriages entered into before, on, or after Nov. 29, 1990, see section 702(c) of Pub. L. 101–649, set out as a note under section 1154 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(f)(2) of Pub. L. 100–525 provided that: ''The amendments made by paragraph (1) [amending this section] and by section 117 of IRCA [section 117 of Pub. L. 99–603, amending this section] shall apply to applications for adjustment of status filed on or after November 6, 1986.''

Amendment by section 2(f)(1), (p)(3) of 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.

Amendment by section 7(b) of Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 3(d)(2) of Pub. L. 99–639 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to adjustments occurring on or after the date of the enactment of this Act [Nov. 10, 1986].''

Amendment by section 5(a) of Pub. L. 99–639 applicable to marriages entered into on or after Nov. 10, 1986, see section 5(c) of Pub. L. 99–639, set out as a note under section 1154 of this title.

Amendment by section 117 of Pub. L. 99–603 applicable to applications for adjustment of status filed on or after Nov. 6, 1986, see section 2(f)(2) of Pub. L. 100–525, set out as an Effective Date of 1988 Amendment note above.

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.

PERMITTING MOTION TO REOPEN

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326, provided that: ''Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)])), a national of Cuba or Nicaragua who has become eligible for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act [see Short Title of 1997 Amendments note set out under section 1101 of this title] as a result of the amendments made by paragraph (1) [amending section 202 of Pub. L. 105–100, set out below], may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment under that Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under that Act. All such motions shall be filed within 180 days of the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–327, provided that: ''Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)])), a national of Haiti who has become eligible for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 [see Short Title of 1998 Amendments note set out under section 1101 of this title] as a result of the amendments made by paragraph (1) [amending section 902 of section 101(h) of div. A of Pub. L. 105–277, set out below], may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment under that Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under that Act. All such motions shall be filed within 180 days of the date of the enactment of this Act [Dec. 21, 2000].''

ADJUSTMENT OF STATUS OF CERTAIN JEWISH SYRIAN NATIONALS

Pub. L. 106–378, Oct. 27, 2000, 114 Stat. 1442, provided for adjustment of status from asylee to lawful permanent residence of not more than 2,000 persons, who must be either (1) Jewish nationals of Syria, who arrived in the United States after Dec. 31, 1991, after being permitted by the Syrian Government to depart from Syria, and were physically present in the United States at the time of filing the application for adjustment of status, or (2) who were the spouse, child, or unmarried son or daughter of such an alien provided that any such eligible person either applied for such adjustment of status not later than 1 year after Oct. 27, 2000, or applied for adjustment of status under this chapter before Oct. 27, 2000, had been physically present in the United States for at least 1 year after being granted asylum; was not firmly resettled in any foreign country; and was admissible as an immigrant under this chapter at the time of examination for adjustment of such alien.

ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS

Pub. L. 105–277, div. A, §101(h) [title IX, §902], Oct. 21, 1998, 112 Stat. 2681–480, 2681–538; as amended by Pub. L. 106–386, div. B, title V, §1511(a), Oct. 28, 2000, 114 Stat. 1532; Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326; Pub. L. 109–162, title VIII, §824(a), Jan. 5, 2006, 119 Stat. 3063; Pub. L. 110–161, div. H, title I, §1502(d), Dec. 26, 2007, 121 Stat. 2250, provided that:

''(a) ADJUSTMENT OF STATUS.—

''(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien—

''(A) applies for such adjustment before April 1, 2000; and

''(B) is otherwise admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply.

''(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

''(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1231(a)(5)] shall not apply; and

''(B) the Attorney General may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act [8 U.S.C. 1182(a)(9)].

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition on submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien who is a national of Haiti who—

''(1) was present in the United States on December 31, 1995, who—

''(A) filed for asylum before December 31, 1995,

''(B) was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, or

''(C) was a child (as defined in the text above subparagraph (A) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) at the time of arrival in the United States and on December 31, 1995, and who—

''(i) arrived in the United States without parents in the United States and has remained without parents in the United States since such arrival,

''(ii) became orphaned subsequent to arrival in the United States, or

''(iii) was abandoned by parents or guardians prior to April 1, 1998 and has remained abandoned since such abandonment; and

''(2) has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed, except that an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

''(c) STAY OF REMOVAL.—

''(1) IN GENERAL.—The Attorney General shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

''(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has made a final determination to deny the application.

''(3) WORK AUTHORIZATION.—The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

''(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.—

''(1) IN GENERAL.—The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

''(A) the alien is a national of Haiti;

''(B)(i) the alien is the spouse, child, or unmarried son or daughter of an alien who is or was eligible for classification under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for such adjustment is filed;

''(ii) at the time of filing of the application for adjustment under subsection (a), the alien is the spouse or child of an alien who is or was eligible for classification under subsection (a) and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subsection (a); and

''(iii) in acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J) [8 U.S.C. 1154(a)(1)(J)].

''(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed; and

''(D) the alien is otherwise admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply.

''(2) PROOF OF CONTINUOUS PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

''(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

''(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255]; or

''(2) aliens subject to removal proceedings under section 240 of such Act [8 U.S.C. 1229a].

''(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Attorney General as to whether the status

of any alien should be adjusted under this section is final and shall not be subject to review by any court.

''(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent resident pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this title [section 101(h) [title IX] of Pub. L. 105–277, enacting sections 1377 and 1378 of this title and provisions set out as a note under section 1101 of this title], the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this title shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

''(i) ADJUSTMENT OF STATUS HAS NO EFFECT ON ELIGIBILITY FOR WELFARE AND PUBLIC BENEFITS.—No alien whose status has been adjusted in accordance with this section and who was not a qualified alien on the date of enactment of this Act [Oct. 21, 1998] may, solely on the basis of such adjusted status, be considered to be a qualified alien under section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b)), as amended by section 5302 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 598), for purposes of determining the alien's eligibility for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.).

''(j) PERIOD OF APPLICABILITY.—Subsection (i) shall not apply after October 1, 2003.''

[Pub. L. 109–162, title VIII, §824(b), Jan. 5, 2006, 119 Stat. 3063, provided that: ''The amendment made by subsection (a)(3) [amending section 101(h) [title IX, §902] of div. A of Pub. L. 105–277, set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).'']

[Pub. L. 106–386, div. B, title V, §1511(b), Oct. 28, 2000, 114 Stat. 1533, provided that: ''The amendment made by subsection (a) [amending section 101(h) [title IX, §902] of div. A of Pub. L. 105–277, set out above] shall be effective as if included in the Haitian Refugee Immigration Fairness Act of 1998 (division A of section 101(h) of Public Law 105–277; 112 Stat. 2681–538).'']

ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS

Pub. L. 105–100, title II, §202, Nov. 19, 1997, 111 Stat. 2193, as amended by Pub. L. 105–139, §1(a), (b), Dec. 2, 1997, 111 Stat. 2644; Pub. L. 106–386, div. B, title V, §1510(a), Oct. 28, 2000, 114 Stat. 1531; Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326; Pub. L. 109–162, title VIII, §815(a), (b), Jan. 5, 2006, 119 Stat. 3060, provided that:

''(a) ADJUSTMENT OF STATUS.—

''(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien—

''(A) applies for such adjustment before April 1, 2000; and

''(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply.

''(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

''(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1231(a)(5)] shall not apply; and

''(B) the Attorney General may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act [8 U.S.C. 1182(a)(9)].

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

''(1) IN GENERAL.—The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days.

''(2) PROOF OF COMMENCEMENT OF CONTINUOUS PRESENCE.—For purposes of establishing that the period of continuous physical presence referred to in paragraph (1) commenced not later than December 1, 1995, an alien—

''(A) shall demonstrate that the alien, prior to December 1, 1995—

''(i) applied to the Attorney General for asylum;

''(ii) was issued an order to show cause under section 242 or 242B of the Immigration and Nationality Act [8 U.S.C. 1252, former 1252b] (as in effect prior to April 1, 1997);

''(iii) was placed in exclusion proceedings under section 236 of such Act [8 U.S.C. 1226] (as so in effect);

''(iv) applied for adjustment of status under section 245 of such Act [8 U.S.C. 1255];

''(v) applied to the Attorney General for employment authorization;

''(vi) performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security; or

''(vii) applied for any other benefit under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by means of an application establishing the alien's presence in the United States prior to December 1, 1995; or

''(B) shall make such other demonstration of physical presence as the Attorney General may provide for by regulation.

''(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

''(1) IN GENERAL.—The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal to seek a stay of such order

based on the filing of an application under subsection (a).

''(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application.

''(3) WORK AUTHORIZATION.—The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

''(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.—

''(1) IN GENERAL.—The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

''(A) the alien is a national of Nicaragua or Cuba;

''(B) the alien—

''(i) is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for adjustment under this subsection is filed; or

''(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted, or was eligible for adjustment, to that of an alien lawfully admitted for permanent residence under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);

''(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;

''(D) the alien is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply; and

''(E) applies for such adjustment before April 1, 2000, or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-month period beginning on the date of enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005 [Jan. 5, 2006].

''(2) PROOF OF CONTINUOUS PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien—

''(A) shall demonstrate that such period commenced not later than December 1, 1995, in a manner consistent with subsection (b)(2); and

''(B) shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period in the aggregate not exceeding 180 days.

''(3) PROCEDURE.—In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section 204(a)(1)(J) [8 U.S.C. 1154(a)(1)(J)].

''(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

''(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255]; or

''(2) aliens subject to removal proceedings under section 240 of such Act [8 U.S.C. 1229a].

''(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

''(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.''

[Pub. L. 109–162, title VIII, § 815(c), Jan. 5, 2006, 119 Stat. 3060, provided that: ''The amendment made by subsection (b) [amending section 202(d)(3) of Pub. L. 105–100, set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).'']

ADJUSTMENT OF STATUS FOR CERTAIN POLISH AND HUNGARIAN PAROLEES

Section 646 of div. C of Pub. L. 104–208 provided that:

''(a) IN GENERAL.—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

''(1) applies for such adjustment;

''(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed;

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c); and

''(4) pays a fee (determined by the Attorney General) for the processing of such application.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided in subsection (a) shall only apply to an alien who—

''(1) was a national of Poland or Hungary; and

''(2) was inspected and granted parole into the United States during the period beginning on November 1, 1989, and ending on December 31, 1991, after being denied refugee status.

''(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A)] shall not apply to adjustment of status under this section and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) and subparagraphs (A), (B), (C), or (E) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

''(d) DATE OF APPROVAL.—Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as an alien lawfully admitted for permanent residence as of the date of the alien's inspection and parole described in subsection (b)(2).

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].''

FINGERPRINT CHECKS

Section 506(d) of Pub. L. 103–317 provided that: ''The Immigration and Naturalization Service shall conduct full fingerprint identification checks through the Federal Bureau of Investigation for all individuals over sixteen years of age adjusting immigration status in the United States pursuant to this section [amending this section and section 1182 of this title and enacting provisions set out as a note under section 1182 of this title].''

ADJUSTMENT OF STATUS OF CERTAIN NATIONALS OF PEOPLE'S REPUBLIC OF CHINA

Pub. L. 102–404, Oct. 9, 1992, 106 Stat. 1969, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Chinese Student Protection Act of 1992'.

''SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

''(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

''(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act [8 U.S.C. 1154(a)] for classification under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)].

''(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

''(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

''(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act [8 U.S.C. 1182(a), (e)] shall not apply; and

''(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

''(4) The numerical level of section 202(a)(2) of such Act [8 U.S.C. 1152(a)(2)] shall not apply.

''(5) Section 245(c) of such Act [8 U.S.C. 1255(c)] shall not apply.

''(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

''(1) is a national of the People's Republic of China described in section 1 of Executive Order No. 12711 [8 U.S.C. 1101 note] as in effect on April 11, 1990;

''(2) has resided continuously in the United States since April 11, 1990 (other than brief, casual, and innocent absences); and

''(3) was not physically present in the People's Republic of China for longer than 90 days after such date and before the date of the enactment of this Act [Oct. 9, 1992].

''(c) CONDITION; DISSEMINATION OF INFORMATION.—

''(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the President has determined and certified to Congress, before the first day of the application period, that conditions in the People's Republic of China permit aliens described in subsection (b)(1) to return to that foreign state in safety.

''(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period, the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b)(1) information respecting the benefits available under this section. To the extent practicable, the Attorney General shall provide notice of these benefits to the last known mailing address of each such alien.

''(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

''(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1152(a)(2)] applicable to natives of the People's Republic of China in each applicable fiscal year (as defined in paragraph (3)) shall be reduced by 1,000.

''(2) ALLOTMENT IF SECTION 202(e) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

''(A) 300 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)] in that year, and

''(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

''(3) APPLICABLE FISCAL YEAR.—

''(A) IN GENERAL.—In this subsection, the term 'applicable fiscal year' means each fiscal year during the period—

''(i) beginning with the fiscal year in which the application period begins; and

''(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph (B) equals or exceeds the total number of aliens whose status has been adjusted under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] pursuant to subsection (a).

''(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.

''(e) APPLICATION PERIOD DEFINED.—In this section, the term 'application period' means the 12-month period beginning July 1, 1993.''

ADJUSTMENT OF STATUS FOR CERTAIN H–1 NONIMMIGRANT NURSES

Pub. L. 101–238, § 2, Dec. 18, 1989, 103 Stat. 2099, as amended by Pub. L. 101–649, title I, § 162(f)(1), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102–232, title III, §§ 302(e)(10), 307(*l*)(10), Dec. 12, 1991, 105 Stat. 1746, 1757, provided that:

''(a) IN GENERAL.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to the adjustment of status under section 245 of such Act [8 U.S.C. 1255] of an immigrant, and the immigrant's accompanying spouse and children—

''(1) who, as of September 1, 1989, has the status of a nonimmigrant under paragraph (15)(H)(i) of section 101(a) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse,

''(2) who, for at least 3 years before the date of application for adjustment of status (whether or not be-

fore, on, or after, the date of the enactment of this Act [Dec. 18, 1989]), has been employed as a registered nurse in the United States, and

''(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(5)(A) of such Act [8 U.S.C. 1182(a)(5)(A)].

The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

''(b) TRANSITION.—For purposes of adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] in the case of an alien who, as of September 1, 1989, is present in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse, who, as of September 1, 1989, is present in the United States and had been admitted to the United States in the status of nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse but has failed to maintain that status due to the expiration of the time limitation with respect to such status, or who is the spouse or child of such an alien, unauthorized employment performed before the date of the enactment of the Immigration Act of 1990 [Nov. 29, 1990] shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and such an alien shall be considered as having continued to maintain lawful status throughout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 162(f)(1) of the Immigration Act of 1990 [Pub. L. 101–649, amending this note].

''(c) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—The definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

''(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).''

[Section 302(e)(10) of Pub. L. 102–232 provided that the amendment made by that section to section 2(b) of Pub. L. 101–238, set out above, is effective as if included in the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.]

[Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section to section 2(a)(3) of Pub. L. 101–238, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

ADJUSTMENT OF STATUS FOR CERTAIN SOVIET AND INDOCHINESE PAROLEES

Pub. L. 106–429, § 101(a) [title V, § 586], Nov. 6, 2000, 114 Stat. 1900, 1900A–57, as amended by Pub. L. 108–447, div. D, title V, § 534(m)(1)–(6), Dec. 8, 2004, 118 Stat. 3007, provided that:

''(a) The status of certain aliens from Vietnam, Cambodia, and Laos described in subsection (b) of this section may be adjusted by the Secretary of Homeland Security, under such regulations as the Secretary of Homeland Security may prescribe, to that of an alien lawfully admitted permanent residence if—

''(1) the alien makes an application for such adjustment and pays the appropriate fee;

''(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence except as described in subsection (c); and

''(3) the alien had been physically present in the United States prior to October 1, 1997.

''(b) The benefits provided by subsection (a) shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia and who was inspected and paroled into the United States before October 1, 1997 and was physically present in the United States on October 1, 1997; and

''(1) was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program; or

''(2) was paroled into the United States from a refugee camp in East Asia; or

''(3) was paroled into the United States from a displaced person camp administered by the United Nations High Commissioner for Refugees in Thailand.

''(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) and (9) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A), (9)] shall not be applicable to any alien seeking admission to the United States under this subsection, and nothwithstanding [sic] any other provision of law, the Secretary of Homeland Security may waive 212(a)(1); 212(a)(6)(B), (C), and (F); 212(a)(8)(A); 212(a)(10)(B) and (D) with respect to such an alien in order to prevent extreme hardship to the alien or the alien's spouse, parent, son or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation.

''(d) DATE OF APPROVAL.—Upon the approval of such an application for adjustment of status, the Secretary of Homeland Security shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(1), (b)(2) and (b)(3).

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(f) ADJUDICATION OF APPLICATIONS.—The Secretary of Homeland Security shall—

''(1) adjudicate applications for adjustment under this section, notwithstanding any limitation on the number of adjustments under this section or any deadline for such applications that previously existed in law or regulation; and

''(2) not charge a fee in addition to any fee that previously was submitted with such application.''

[Pub. L. 108–447, div. D, title V, § 534(m)(7), Dec. 8, 2004, 118 Stat. 3007, provided that: ''The amendments made by this subsection [amending section 101(a) [title V, § 586] of Pub. L. 106–429, set out above] shall take effect as if enacted as part of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 [Pub. L. 106–429].'']

Pub. L. 101–167, title V, § 599E, Nov. 21, 1989, 103 Stat. 1263, as amended by Pub. L. 101–513, title V, § 598(b), Nov. 5, 1990, 104 Stat. 2063; Pub. L. 101–649, title VI, § 603(a)(22), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 102–232, title III, § 307(*l*)(9), Dec. 12, 1991, 105 Stat. 1757; Pub. L. 102–391, title V, § 582(a)(2), (b)(2), Oct. 6, 1992, 106 Stat. 1686; Pub. L. 102–511, title IX, § 905(b)(2), Oct. 24, 1992, 106 Stat. 3356; Pub. L. 103–236, title V, § 512(2), Apr. 30, 1994, 108 Stat. 466; Pub. L. 103–416, title II, § 219(bb), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 575(2)], Sept. 30, 1996, 110 Stat. 3009–121, 3009–168; Pub. L. 104–319, title I, § 101(2), Oct. 19, 1996, 110 Stat. 3865; Pub. L. 105–118, title V, § 574(2), Nov. 26, 1997, 111 Stat. 2432; Pub. L. 105–277, div. A, § 101(f) [title VII, § 705(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389; Pub. L. 106–113, div. B, § 1000(a)(4) [title II, § 214(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A–240; Pub. L. 106–554, § 1(a)(1) [title II, § 212(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–27; Pub. L. 107–116, title II, § 213(2), Jan. 10, 2002, 115 Stat. 2200; Pub. L. 108–7, div. G, title II, § 213(2), Feb. 20, 2003, 117 Stat. 324; Pub. L. 108–199, div. E, title II, § 213(2), Jan. 23, 2004,

118 Stat. 253; Pub. L. 108–447, div. F, title II, § 213(2), Dec. 8, 2004, 118 Stat. 3140; Pub. L. 109–102, title V, § 534(m)(2), Nov. 14, 2005, 119 Stat. 2211; Pub. L. 109–289, div. B, title II, § 20412(b)(2), as added by Pub. L. 110–5, § 2, Feb. 15, 2007, 121 Stat. 25; Pub. L. 110–161, div. J, title VI, § 634(k)(2), Dec. 26, 2007, 121 Stat. 2329, provided that:

''(a) IN GENERAL.—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

''(1) applies for such adjustment,

''(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed,

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c), and

''(4) pays a fee (determined by the Attorney General) for the processing of such application.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided in subsection (a) shall only apply to an alien who—

''(1) was a national of an independent state of the former Soviet Union, Estonia, Latvia, Lithuania, Vietnam, Laos, or Cambodia, and

''(2) was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 2008, after being denied refugee status.

''(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A)] shall not apply to adjustment of status under this section 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 adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

''(d) DATE OF APPROVAL.—Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(2).

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].''

[Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section to section 599E of Pub. L. 101–167, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

Pub. L. 95–145, title I, §§ 101–107, Oct. 28, 1977, 91 Stat. 1223, as amended by Pub. L. 96–212, title II, § 203(i), Mar. 17, 1980, 94 Stat. 108, provided that status of alien who was native or citizen of Vietnam, Laos, or Cambodia, and was paroled into United States as refugee between Mar. 31, 1975, and Jan. 1, 1979, or was inspected and admitted or paroled into United States on or before Mar. 31, 1975, and was physically present in United States on Mar. 31, 1975, could be adjusted by Attorney General to that of an alien lawfully admitted for permanent residence if alien applied for such adjustment within six years after Oct. 28, 1977, and met certain other eligibility requirements.

ADJUSTMENT OF STATUS OF NONIMMIGRANT ALIENS RESIDING IN THE VIRGIN ISLANDS TO PERMANENT RESIDENT ALIEN STATUS

Pub. L. 97–271, Sept. 30, 1982, 96 Stat. 1157, as amended by Pub. L. 101–649, title I, § 162(e)(6), Nov. 29, 1990, 104 Stat. 5011, provided that status of alien who was inspected and admitted to Virgin Islands of the United States as a nonimmigrant alien worker under section 1101(a)(15)(H)(ii) of this title, or as spouse or minor child of such worker, and had resided continuously in Virgin Islands of the United States since June 30, 1975, could be adjusted by Attorney General to that of an alien lawfully admitted for permanent residence if alien applied for such adjustment during one-year period beginning Sept. 30, 1982, and met certain other eligibility requirements.

DEVELOPMENT OF ELIGIBILITY CRITERIA FOR ADMISSION OF REFUGEES FROM CAMBODIA

Pub. L. 95–624, § 16, Nov. 9, 1978, 92 Stat. 3465, provided that: ''The Attorney General, in consultation with the Congress, shall develop special eligibility criteria under the current United States parole program for Indochina Refugees which would enable a larger number of refugees from Cambodia to qualify for admission to the United States.''

CUBAN REFUGEES: ADJUSTMENT OF STATUS

Section 606 of div. C of Pub. L. 104–208 provided that:

''(a) IN GENERAL.—Public Law 89–732 [set out below] is repealed effective only upon a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 [22 U.S.C. 6063(c)] (Public Law 104–114) that a democratically elected government in Cuba is in power.

''(b) LIMITATION.—Subsection (a) shall not apply to aliens for whom an application for adjustment of status is pending on such effective date.''

Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended by Pub. L. 94–571, § 8, Oct. 20, 1976, 90 Stat. 2706; Pub. L. 96–212, title II, § 203(i), Mar. 17, 1980, 94 Stat. 108; Pub. L. 106–386, div. B, title V, § 1509(a), Oct. 28, 2000, 114 Stat. 1530; Pub. L. 109–162, title VIII, § 823(a), Jan. 5, 2006, 119 Stat. 3063, provided: ''That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act [subsec. (c) of this section], the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J) [probably means section 204(a)(1)(J) of the Immigration and Nationality Act, which is classified to section 1154(a)(1)(J) of this title]. An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or, if later, 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005) [Jan. 5, 2006], or for 2 years after the date of termination of the marriage (or, if later, 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.

''SEC. 2. In the case of any alien described in section 1 of this Act who prior to the effective date thereof [Nov. 2, 1966], has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act [Nov. 2, 1966], whichever date is later.

''SEC. 3. Section 13 of the Act entitled 'An Act to amend the Immigration and Nationality Act, and for other purposes', approved October 3, 1965 (Public Law 89–236) [amending subsecs. (b) and (c) of this section] is amended by adding at the end thereof the following new subsection:

'''(c) Nothing contained in subsection (b) of this section [amending subsec. (c) of this section] shall be construed to affect the validity of any application for adjustment under section 245 [this section] filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act [Pub. L. 89–236] are, unless otherwise specifically provided therein, continued in force and effect.'

''SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act [section 1101(a), (b) of this title] shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.

''SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976 [see Effective Date of 1976 Amendment note above].''

[Pub. L. 109–162, title VIII, § 823(b), Jan. 5, 2006, 119 Stat. 3063, provided that: ''The amendment made by subsection (a)(1) [amending Pub. L. 89–732 set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).''']

[Pub. L. 106–386, div. B, title V, § 1509(b), Oct. 28, 2000, 114 Stat. 1531, provided that: ''The amendment made by subsection (a) [amending Pub. L. 89–732 set out above] shall be effective as if included in subtitle G [§ 40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq. [see Tables for classification].)''']

[Section 204(b)(1)(C) of Pub. L. 96–212 provided that the amendment of section 1 of Pub. L. 89–732, set out above, by Pub. L. 96–212 is effective immediately before Apr. 1, 1980.]

§ 1255a. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

(a) Temporary resident status

The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application

(A) During application period

Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after November 6, 1986) designated by the Attorney General.

(B) Application within 30 days of show-cause order

An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 1252 of this title (as in effect before October 1, 1996), must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application

Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 1154(a) of this title.

(2) Continuous unlawful residence since 1982

(A) In general

The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants

In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) Exchange visitors

If the alien was at any time a nonimmigrant exchange alien (as defined in section 1101(a)(15)(J) of this title), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 1182(e) of this title or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since November 6, 1986

(A) In general

The alien must establish that the alien has been continuously physically present in the United States since November 6, 1986.

(B) Treatment of brief, casual, and innocent absences

An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions

Nothing in this section shall be construed as authorizing an alien to apply for admis-

sion to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant

The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section,

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act [50 U.S.C. App. 451 et seq.], if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 [8 U.S.C. 1522 note] shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) Subsequent adjustment to permanent residence and nature of temporary resident status

(1) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) of this section to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence

The alien must apply for such adjustment during the 2-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence

(i) In general

The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences

An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant

The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills

(i) In general

The alien must demonstrate that he either—

(I) meets the requirements of section 1423(a) of this title (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly or developmentally disabled individuals

The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

(iii) Relation to naturalization examination

In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 1423(a) of this title may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under subchapter III of this chapter.

(2) Termination of temporary residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a) of this section—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the 43rd first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under subsection (a) of this section—

(A) Authorization of travel abroad

The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) Authorization of employment

The Attorney General shall grant the alien authorization to engage in employment in

the United States and provide to that alien an ''employment authorized'' endorsement or other appropriate work permit.

(c) Applications for adjustment of status

(1) To whom may be made

The Attorney General shall provide that applications for adjustment of status under subsection (a) of this section may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term ''qualified designated entity'' means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications

For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, 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) Treatment of applications by designated entities

Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) 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.

(4) Limitation on access to information

Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application 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.

(5) 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, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant 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 the 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) Authorized disclosures

The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(D) 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 immigration enforcement or law enforcement purposes.

(E) Crime

Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

(6) Penalties for false statements in applications

Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, 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, shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Application fees

(A) Fee schedule

The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1) of this section. The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) of this section after the end of the first year of the 2-year period described in subsection (b)(1)(A) of this section.

(B) Use of fees

The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(C) Immigration-related unfair employment practices

Not to exceed $3,000,000 of the unobligated balances remaining in the account established in subparagraph (B) shall be available in fiscal year 1992 and each fiscal year thereafter for grants, contracts, and cooperative agreements to community-based organizations for outreach programs, to be administered by the Office of Special Counsel for Immigration-Related Unfair Employment Practices: *Provided*, That such amounts shall be in addition to any funds appropriated to the Office of Special Counsel for such purposes: *Provided further*, That none of the funds made available by this section shall be used by the Office of Special Counsel to establish regional offices.

(d) 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 subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B) 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 (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.

(III) Paragraph (3) (relating to security and related grounds).

(IV) Paragraph (4) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

Subclause (IV) (prohibiting the waiver of section 1182(a)(4) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(iii) 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 receipt of public cash assistance.

(C) Medical examination

The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) Temporary stay of 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)(A) of this section and who can establish a prima facie 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 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 prima facie 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 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.

(f) 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) No review for late filings

No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) 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 a determination described in paragraph (1).

(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.

(4) Judicial review

(A) Limitation to review of deportation

There shall be judicial review of such a denial only in the judicial review of an order of 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.

(C) Jurisdiction of courts

Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1) of this section, or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

(g) Implementation of section

(1) Regulations

The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term ''resided continuously'', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) Considerations

In prescribing regulations described in paragraph (1)(A)—

(A) Periods of continuous residence

The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) Absences caused by deportation or advanced parole

The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) Waivers of certain absences

The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) Use of certain documentation

The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) Interim final regulations

Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance

(1) In general

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—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the State program of assistance under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and

(iii) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) of this section shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) Exceptions

Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 [8 U.S.C. 1255 note], as in effect on April 1, 1983), or

(B) in the case of assistance (other than assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(3) Restricted medicaid benefits

(A) Clarification of entitlement

Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) Restriction of benefits

(i) Limitation to emergency services and services for pregnant women

Notwithstanding any provision of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act [42 U.S.C. 1396a(a)(10)(B), (C)]), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act [42 U.S.C. 1396*o*(a)(2)(D)]), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) No restriction for exempt aliens and children

The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) Definition of medical assistance

In this paragraph, the term ''medical assistance'' refers to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) Treatment of certain programs

Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(B) The Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(C) The The[1] Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.].

(D) Title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(E) The Headstart-Follow Through Act [42 U.S.C. 2921 et seq.].

(F) Title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(G) Title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(H) The Public Health Service Act [42 U.S.C. 201 et seq.].

(I) Titles V, XVI, and XX [42 U.S.C. 701 et seq., 1381 et seq., 1397 et seq.], and parts B, D, and E of title IV [42 U.S.C. 620 et seq., 651 et seq., 670 et seq.], of the Social Security Act (and titles I, X, XIV, and XVI of such Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq.,

[1] So in original.

1381 et seq.] as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) Adjustment not affecting Fascell-Stone benefits

For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122)[2] [8 U.S.C. 1255 note], assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) Dissemination of information on legalization program

Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A) of this section, the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

(June 27, 1952, ch. 477, title II, ch. 5, §245A, as added Pub. L. 99–603, title II, §201(a)(1), Nov. 6, 1986, 100 Stat. 3394; amended Pub. L. 100–525, §2(h)(1), Oct. 24, 1988, 102 Stat. 2611; Pub. L. 101–649, title VI, §603(a)(13), title VII, §703, Nov. 29, 1990, 104 Stat. 5083, 5086; Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 785; Pub. L. 102–232, title III, §307(*l*)(6), Dec. 12, 1991, 105 Stat. 1756; Pub. L. 103–382, title III, §394(g), Oct. 20, 1994, 108 Stat. 4028; Pub. L. 103–416, title I, §108(b), title II, §219(*l*)(1), Oct. 25, 1994, 108 Stat. 4310, 4317; Pub. L. 104–132, title IV, §431(a), Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104–193, title I, §110(s)(2), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104–208, div. C, title III, §§308(g)(2)(B), (5)(A)(iii), 377(a), 384(d)(1), title VI, §623(a), Sept. 30, 1996, 110 Stat. 3009–622, 3009–623, 3009–649, 3009–653, 3009–696; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(4), (f)(4)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 105–332, §3(a), Oct. 31, 1998, 112 Stat. 3125; Pub. L. 106–78, title VII, §752(b)(5), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 109–270, §2(a), Aug. 12, 2006, 120 Stat. 746.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(4)(D), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see note set out under section 451 of Title 50, Appendix, and Tables.

Public Law 96–422, referred to in subsecs. (a) and (h)(2)(A), (5), is Pub. L. 96–422, Oct. 10, 1980, 94 Stat. 1799, as amended, which is known as the Refugee Education Assistance Act of 1980, and is set out as a note under section 1522 of this title.

Public Law 89–732, referred to in subsec. (c)(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. (c)(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.

[2] So in original. Probably should be "(Public Law 96–422)".

Section 404 of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(5)(A)(i), is section 404 of Pub. L. 99–603 which is set out as a note below.

Section 1105a of this title, referred to in subsec. (f)(4)(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. (h)(1)(A), (2)(B), (3)(A)(ii), (B)(i), (C), (4)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A, B, D, and E of title IV of the Social Security Act are classified generally to parts A (§601 et seq.), B (§620 et seq.), D (§651 et seq.), and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles I, V, X, XIV, XVI, XIX, and XX of the Social Security Act are classified generally to subchapters I (§301 et seq.), V (§701 et seq.), X (§1201 et seq.), XIV (§1351 et seq.), XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (h)(4)(I), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of Title 42.

The Food Stamp Act of 1977, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (h)(4)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (h)(4)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (h)(4)(C), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (h)(4)(D), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Headstart-Follow Through Act, referred to in subsec. (h)(4)(E), is title V of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 527, as amended, which was classified generally to subchapter V (§2921 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in subsec. (h)(4)(F), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Higher Education Act of 1965, referred to in subsec. (h)(4)(G), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C

(§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (h)(4)(H), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1255a, Pub. L. 85–316, § 9, Sept. 11, 1957, 71 Stat. 641, provided for adjustment of status of certain resident aliens to that of a person admitted for permanent residence, the recording by Attorney General of alien's lawful admission for permanent residence, and for granting of nonquota status to spouse and children, prior to repeal, eff. 180 days after Sept. 26, 1961, by Pub. L. 87–301, § 24(a)(5), (b), Sept. 26, 1961, 75 Stat. 657.

AMENDMENTS

2006—Subsec. (h)(4)(C). Pub. L. 109–270 substituted ''The Carl D. Perkins Career and Technical Education Act of 2006'' for ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

1999—Subsec. (h)(4)(A). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

1998—Subsec. (h)(4)(C). Pub. L. 105–332 substituted ''Carl D. Perkins Vocational and Technical Education Act of 1998'' for ''Vocational Education Act of 1963''.

Subsec. (h)(4)(F). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(4)], substituted ''Title I'' for ''The Job Training Partnership Act or title I''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(4)], substituted ''The Job Training Partnership Act or title I of the Workforce Investment Act of 1998.'' for ''The Job Training Partnership Act.''

1996—Subsec. (a)(1)(B). Pub. L. 104–208, § 308(g)(5)(A)(iii), inserted ''(as in effect before October 1, 1996)'' after ''section 1252 of this title''.

Subsec. (c)(5). Pub. L. 104–208, § 623(a), amended heading and text of par. (5) generally, substituting subpars. (A) to (E) for former par. consisting of introductory and concluding provisions and subpars. (A) to (C), 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(a)(2), which directed the insertion of ''and'' and cl. (ii) after ''Title 13'', was executed by making the insertion after ''title 13'' in concluding provisions to reflect the probable intent of Congress. Cl. (ii) read as follows: ''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—

''(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

''(II) for criminal law enforcement purposes against the alien whose application is to be disclosed.''

Pub. L. 104–132, § 431(a)(1), which directed amendment by inserting ''(i)'' after ''except the Attorney General'', was executed by making the insertion after ''except that the Attorney General'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (f)(4)(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)(4)(C). Pub. L. 104–208, § 377(a), added subpar. (C).

Subsec. (h)(1)(A)(i). Pub. L. 104–193, § 110(s)(2)(A), substituted ''State program of assistance'' for ''program of aid to families with dependent children''.

Subsec. (h)(2)(B). Pub. L. 104–193, § 110(s)(2)(B), substituted ''assistance under a State program funded under part A of title IV of the Social Security Act'' for ''aid to families with dependent children''.

1994—Subsec. (b)(1)(D)(i)(I), (iii). Pub. L. 103–416, § 108(b), substituted ''1423(a)'' for ''1423''.

Subsec. (c)(7)(C). Pub. L. 103–416, § 219(*l*)(1), realigned margins and substituted ''subparagraph (B)'' for ''subsection (B)''.

Subsec. (h)(4)(D). Pub. L. 103–382 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''Chapter 1 of the Education Consolidation and Improvement Act of 1981.''

1991—Subsec. (c)(7)(C). Pub. L. 102–140, which directed the addition ''after subsection (B)'' of ''a new subsection'' (C), was executed by adding subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d)(2)(B)(ii). Pub. L. 102–232, substituted ''Subclause (IV)'' for ''Subclause (II)'' in last sentence, added subcl. (III), redesignated former subcl. (III) as (II) and former subcl. (II) as (IV), and struck out former subcl. (IV) which read as follows: ''Paragraphs (3) (relating to security and related grounds), other than subparagraph (E) thereof.''

1990—Subsec. (b)(1)(A). Pub. L. 101–649, § 703(a)(1), substituted ''2-year period'' for ''one-year period''.

Subsec. (b)(2)(C). Pub. L. 101–649, § 703(a)(2), substituted ''43rd'' for ''thirty-first''.

Subsec. (c)(7)(A). Pub. L. 101–649, § 703(b), inserted at end ''The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) of this section after the end of the first year of the 2-year period described in subsection (b)(1)(A) of this section.''

Subsec. (d)(2)(A). Pub. L. 101–649, § 603(a)(13)(A), substituted ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)''.

Subsec. (d)(2)(B)(ii). Pub. L. 101–649, § 603(a)(13)(G), substituted ''1182(a)(4)'' for ''1182(a)(15)'' in last sentence.

Subsec. (d)(2)(B)(ii)(I). Pub. L. 101–649, § 603(a)(13)(B), substituted ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)''.

Subsec. (d)(2)(B)(ii)(II). Pub. L. 101–649, § 603(a)(13)(C), substituted ''(4)'' for ''(15)''.

Subsec. (d)(2)(B)(ii)(III). Pub. L. 101–649, § 603(a)(13)(D), substituted ''(2)(C)'' for ''(23)''.

Subsec. (d)(2)(B)(ii)(IV). Pub. L. 101–649, § 603(a)(13)(E), substituted ''(3) (relating to security and related grounds), other than subparagraph (E) thereof'' for ''(27), (28), and (29) (relating to national security and members of certain organizations)''.

Subsec. (d)(2)(B)(ii)(V). Pub. L. 101–649, § 603(a)(13)(F), struck out subcl. (V) which referred to par. (33).

Subsec. (d)(2)(B)(iii). Pub. L. 101–649, § 603(a)(13)(H), substituted ''1182(a)(4)'' for ''1182(a)(15)''.

1988—Subsec. (a)(1)(B). Pub. L. 100–525, § 2(h)(1)(A), substituted ''12-month'' for ''18-month''.

Subsec. (b)(1)(D)(ii). Pub. L. 100–525, § 2(h)(1)(B), inserted references to developmentally disabled in heading and text.

Subsec. (c)(1). Pub. L. 100–525, § 2(h)(1)(C), amended closing provisions generally without change.

Subsec. (c)(5). Pub. L. 100–525, § 2(h)(1)(D)(ii), substituted semicolon for period at end of first sentence and inserted ''except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.''

Subsec. (c)(5)(A). Pub. L. 100–525, § 2(h)(1)(D)(i), inserted ''or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986'' after ''paragraph (6)''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–525, §2(h)(1)(E)(ii), inserted at end ''Subclause (II) (prohibiting the waiver of section 1182(a)(15) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).''

Subsec. (d)(2)(B)(ii)(II). Pub. L. 100–525, §2(h)(1)(E)(i), struck out ''by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a) of this section'' after ''permanent residence''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(4)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(4)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(2)(B), (5)(A)(iii) 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 377(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603].''

Amendment by section 384(d)(1) of Pub. L. 104–208 applicable to offenses occurring on or after Sept. 30, 1996, see section 384(d)(2) of Pub. L. 104–208, set out as a note under section 1160 of this title.

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

Amendment by section 219(*l*)(1) 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(*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

Amendment by section 603(a)(13) of 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.

REPORT ON CITIZENSHIP OF CERTAIN LEGALIZED ALIENS

Section 109 of Pub. L. 103–416 provided that: ''Not later than June 30, 1996, the Commissioner of the Immigration and Naturalization Service shall prepare and submit to the Congress a report concerning the citizenship status of aliens legalized under section 245A and section 210 of the Immigration and Nationality Act [8 U.S.C. 1255a, 1160]. Such report shall include the following information by district office for each national origin group:

''(1) The number of applications for citizenship filed.

''(2) The number of applications approved.

''(3) The number of applications denied.

''(4) The number of applications pending.''

FAMILY UNITY

Section 301 of Pub. L. 101–649, as amended by Pub. L. 101–649, title VI, §603(a)(23), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 103–416, title II, §206(a), Oct. 25, 1994, 108 Stat. 4311; Pub. L. 104–208, div. C, title III, §§308(d)(4)(R), (e)(2)(H), (16), (g)(1), (7)(E)(ii), 383(a), Sept. 30, 1996, 110 Stat. 3009–619 to 3009–622, 3009–624, 3009–652, provided that:

''(a) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN ELIGIBLE IMMIGRANTS.—The Attorney General shall provide that in the case of an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C)) or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A)), who has entered the United States before such date, who resided in the United States on such date, and who is not lawfully admitted for permanent residence, the alien—

''(1) may not be removed or otherwise required to depart from the United States on a ground specified in paragraph (1)(A), (1)(B), (1)(C), (3)(A), of section 237(a) of the Immigration and Nationality Act [8 U.S.C. 1227(a)] (other than so much of section 237(a)(1)(A) of such Act as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 212(a) of such Act [8 U.S.C. 1182(a)]), and

''(2) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

''(b) ELIGIBLE IMMIGRANT AND LEGALIZED ALIEN DEFINED.—In this section:

''(1) The term 'eligible immigrant' means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

''(2) The term 'legalized alien' means an alien lawfully admitted for temporary or permanent residence who was provided—

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

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

''(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below].

''(c) APPLICATION OF DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.

''(d) TEMPORARY DISQUALIFICATION FROM CERTAIN PUBLIC WELFARE ASSISTANCE.—Aliens provided the benefits of this section by virtue of their relation to a legalized alien described in subsection (b)(2)(A) or (b)(2)(B) shall be ineligible for public welfare assistance in the same manner and for the same period as the le-

galized alien is ineligible for such assistance under section 245A(h) or 210(f), respectively, of the Immigration and Nationality Act [8 U.S.C. 1255a(h), 1160(f)].

''(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for the benefits of this section if the Attorney General finds that—

''(1) the alien has been convicted of a felony or 3 or more misdemeanors in the United States,

''(2) the alien is described in section 208(b)(2)(A) of the Immigration and Nationality Act [8 U.S.C. 1158(b)(2)(A)], or

''(3) [the alien] has committed an act of juvenile delinquency which if committed by an adult would be classified as—

''(A) a felony crime of violence that has an element the use or attempted use of physical force against another individual, or

''(B) a felony offense that by its nature involves a substantial risk that physical force against another individual may be used in the course of committing the offense.

''(f) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

''(g) EFFECTIVE DATE.—This section shall take effect on October 1, 1991; except that the delay in effectiveness of this section shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.''

[Section 383(b) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending section 301 of Pub. L. 101–649, set out above] shall apply to benefits granted or extended after the date of the enactment of this Act [Sept. 30, 1996].'']

[Section 206(b) of Pub. L. 103–416 provided that: ''The amendment made by subsection (a) [amending section 301 of Pub. L. 101–649, set out above] shall be deemed to have become effective as of October 1, 1991.'']

USE OF CAPITAL ASSETS BY IMMIGRATION AND NATURALIZATION SERVICE

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000, provided: ''That for fiscal year 1990 and hereafter capital assets acquired by the Immigration Legalization account may be made available for the general use of the Immigration and Naturalization Service after they are no longer needed for immigration legalization purposes''.

ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF COUNTRIES FOR WHICH EXTENDED VOLUNTARY DEPARTURE HAS BEEN MADE AVAILABLE

Pub. L. 100–204, title IX, § 902, Dec. 22, 1987, 101 Stat. 1400, provided that:

''(a) ADJUSTMENT OF STATUS.—The status of any alien who is a national of a foreign country the nationals of which were provided (or allowed to continue in) 'extended voluntary departure' by the Attorney General on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987, shall be adjusted by the Attorney General to that of an alien lawfully admitted for temporary residence if the alien—

''(1) applies for such adjustment within two years after the date of the enactment of this Act [Dec. 22, 1987];

''(2) establishes that (A) the alien entered the United States before July 21, 1984, and (B) has resided continuously in the United States since such date and through the date of the enactment of this Act;

''(3) establishes continuous physical presence in the United States (other than brief, casual, and innocent absences) since the date of the enactment of this Act;

''(4) in the case of an alien who entered the United States as a nonimmigrant before July 21, 1984, establishes that (A) the alien's period of authorized stay as a nonimmigrant expired not later than six months after such date through the passage of time or (B) the alien applied for asylum before July 21, 1984; and

''(5) meets the requirements of section 245A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(4)).

The Attorney General shall provide for the acceptance and processing of applications under this subsection by not later than 90 days after the date of the enactment of this Act.

''(b) STATUS AND ADJUSTMENT OF STATUS.—The provisions of subsections (b), (c)(6), (d), (f), (g), (h), and (i) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) shall apply to aliens provided temporary residence under subsection (a) in the same manner as they apply to aliens provided lawful temporary residence status under section 245A(a) of such Act.''

Similar provisions were contained in Pub. L. 100–202, § 101(a) [title IX, §§ 901, 902], Dec. 22, 1987, 101 Stat. 1329, 1329–43.

PROCEDURES FOR PROPERTY ACQUISITION OR LEASING

Section 201(c)(1) of Pub. L. 99–603 provided that notwithstanding Federal Property and Administrative Services Act of 1949 [chapters 1 to 11 of Title 40, Public Buildings, Property, and Works and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)], the Attorney General was authorized for period of up to two years after effective date of legalization program, to expend from appropriation provided for administration and enforcement of this chapter, such amounts necessary for leasing or acquisition of property in fulfillment of section 201 of Pub. L. 99–603, which enacted this section and amended sections 602, 672, and 673 of Title 42, The Public Health and Welfare.

USE OF RETIRED FEDERAL EMPLOYEES

Section 201(c)(2) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(h)(2), Oct. 24, 1988, 102 Stat. 2612, provided that: ''Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the pay and annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section [enacting this section and amending sections 602, 672, and 673 of Title 42, The Public Health and Welfare]. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.''

CUBAN-HAITIAN ADJUSTMENT

Section 202 of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(i), Oct. 24, 1988, 102 Stat. 2612, provided that the status of an alien who received an immigration designation as a Cuban/Haitian Entrant as of Nov. 6, 1986, or who was a national of Cuba or Haiti, who arrived in the United States before Jan. 1, 1982, could be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence if the alien applied for such adjustment within two years after Nov. 6, 1986, and met certain other eligibility requirements.

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

Section 204 of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(k), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1174; Pub. L. 101–238, § 6(a), Dec. 18, 1989, 103 Stat. 2104; Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2206; Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1124; Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1808; Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2558; Pub. L.

103–416, title II, § 219(cc), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. C, title VI, § 671(b)(9), (d)(2), Sept. 30, 1996, 110 Stat. 3009–722, 3009–723, related to State legalization impact-assistance grants and appropriation of funds, prior to repeal by Pub. L. 105–220, title I, § 199(a)(1), Aug. 7, 1998, 112 Stat. 1058.

APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS

Section 303(c) of Pub. L. 99–603, defined ''eligible legalized alien'' relative to State legalization assistance, prior to repeal by Pub. L. 100–525, § 2(n)(3), Oct. 24, 1988, 102 Stat. 2613.

REPORTS ON LEGALIZATION PROGRAM

Section 404 of Pub. L. 99–603 provided that:

''(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

''(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

''(1) geographical origins and manner of entry of these aliens into the United States,

''(2) their demographic characteristics, and

''(3) a general profile and characteristics.

''(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

''(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

''(2) the patterns of employment of the legalized population, and

''(3) the participation of legalized aliens in social service programs.''

[Functions of President under section 404 of Pub. L. 99–603 relating to initial report described in section 404(b) delegated to Secretary of Homeland Security and relating to second report described in section 404(c) delegated to Secretary of Labor by sections 1(c) and 2(c) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended, set out as a note under section 1364 of this title.]

§ 1255b. Adjustment of status of certain nonimmigrants to that of persons admitted for permanent residence

Notwithstanding any other provision of law—

(a) Application

Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(A)(i), (ii), (G)(i), (ii)], who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) Record of admission

If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for adjustment of status is made.

(c) Report to the Congress; resolution not favoring adjustment of status; reduction of quota

A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. The Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one the quota of the quota area to which the alien is chargeable under section 202 of the Immigration and Nationality Act [8 U.S.C. 1152] for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

(d) Limitations

The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed fifty.

(Pub. L. 85–316, § 13, Sept. 11, 1957, 71 Stat. 642; Pub. L. 97–116, § 17, Dec. 29, 1981, 95 Stat. 1619; Pub. L. 100–525, § 9(kk), Oct. 24, 1988, 102 Stat. 2622; Pub. L. 103–416, title II, § 207, Oct. 25, 1994, 108 Stat. 4312; Pub. L. 104–208, div. C, title VI, § 671(b)(4), Sept. 30, 1996, 110 Stat. 3009–721.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208 made technical amendment to directory language of Pub. L. 103–416, § 207(2). See 1994 Amendment note below.

1994—Subsec. (c). Pub. L. 103–416, § 207(1), struck out after second sentence ''If, during the session of the Congress at which a case is reported, or prior to the close of the session of Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the adjustment of status of such alien, the Attorney General shall thereupon require the departure of such alien in the manner provided by law.''

Pub. L. 103–416, § 207(2), as amended by Pub. L. 104–208, substituted ''The'' for ''If neither the Senate nor the House of Representatives passes such a resolution within the time above specified, the''.

1988—Subsec. (b). Pub. L. 100–525 struck out ''of'' after ''as of the date''.

1981—Subsec. (b). Pub. L. 97–116 inserted provision requiring that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, see section 671(b)(14) 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.

DEFINITIONS; APPLICABILITY OF SECTION 1101(a) AND (b) OF THIS TITLE

The definitions in subsecs. (a) and (b) of section 1101 of this title apply to this section, see section 14 of Pub. L. 85–316, set out as a note under section 1101 of this title.

§ 1256. Rescission of adjustment of status; effect upon naturalized citizen

(a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 1255 or 1259 of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 1229a of this title, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

(b) Any person who has become a naturalized citizen of the United States upon the basis of a record of a lawful admission for permanent residence, created as a result of an adjustment of status for which such person was not in fact eligible, and which is subsequently rescinded under subsection (a) of this section, shall be subject to the provisions of section 1451 of this title as a person whose naturalization was procured by concealment of a material fact or by willful misrepresentation.

(June 27, 1952, ch. 477, title II, ch. 5, § 246, 66 Stat. 217; Pub. L. 103–416, title II, § 219(m), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title III, §§ 308(e)(1)(H), 378(a), Sept. 30, 1996, 110 Stat. 3009–619, 3009–649.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 378(a), inserted at end ''Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 1229a of this title, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.''

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

1994—Subsec. (a). Pub. L. 103–416 struck out first three sentences which read as follows: ''If, at any time within five years after the status of a person has been adjusted under the provisions of section 1254 of this title or under section 19(c) of the Immigration Act of February 5, 1917, to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution withdrawing suspension of deportation, the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(1)(H) 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 378(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the title III–A effective date (as defined in section 309(a) of this division [set out as a note under section 1101 of this title]).''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(m) of Pub. L. 103–416 provided that the amendment made by that section is effective Oct. 25, 1994.

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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1257. Adjustment of status of certain resident aliens to nonimmigrant status; exceptions

(a) The status of an alien lawfully admitted for permanent residence shall be adjusted by the Attorney General, under such regulations as he may prescribe, to that of a nonimmigrant under paragraph (15)(A), (E), or (G) of section 1101(a) of

this title, if such alien had at the time of admission or subsequently acquires an occupational status which would, if he were seeking admission to the United States, entitle him to a nonimmigrant status under such paragraphs. As of the date of the Attorney General's order making such adjustment of status, the Attorney General shall cancel the record of the alien's admission for permanent residence, and the immigrant status of such alien shall thereby be terminated.

(b) The adjustment of status required by subsection (a) of this section shall not be applicable in the case of any alien who requests that he be permitted to retain his status as an immigrant and who, in such form as the Attorney General may require, executes and files with the Attorney General a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order which would otherwise accrue to him because of the acquisition of an occupational status entitling him to a nonimmigrant status under paragraph (15)(A), (E), or (G) of section 1101(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 247, 66 Stat. 218; Pub. L. 104–208, div. C, title III, § 308(f)(1)(P), Sept. 30, 1996, 110 Stat. 3009–621.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted ''time of admission'' for ''time of entry''.

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.

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.

§ 1258. Change of nonimmigrant classification

(a) The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title), except (subject to subsection (b) of this section) in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 1101(a)(15) of this title,

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who came to the United States or acquired such classification in order to receive graduate medical education or training,

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) of this title and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(b) The exceptions specified in paragraphs (1) through (4) of subsection (a) of this section shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 248, 66 Stat. 218; Pub. L. 87–256, § 109(d), Sept. 21, 1961, 75 Stat. 535; Pub. L. 97–116, § 10, Dec. 29, 1981, 95 Stat. 1617; Pub. L. 99–603, title III, § 313(d), Nov. 6, 1986, 100 Stat. 3439; Pub. L. 103–322, title XIII, § 130003(b)(3), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 104–208, div. C, title III, § 301(b)(2), title VI, § 671(a)(2), Sept. 30, 1996, 110 Stat. 3009–578, 3009–721; Pub. L. 109–162, title VIII, § 821(c)(1), Jan. 5, 2006, 119 Stat. 3062.)

AMENDMENTS

2006—Pub. L. 109–162 designated existing provisions as subsec. (a), substituted ''Secretary of Homeland Security'' for ''Attorney General'', inserted ''(subject to subsection (b) of this section)'' after ''except'' in introductory provisions, and added subsec. (b).

1996—Pub. L. 104–208, § 301(b)(2), in introductory provisions, inserted ''and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title)'' after ''maintain that status''.

Par. (1). Pub. L. 104–208, § 671(a)(2), made technical amendment to directory language of Pub. L. 103–322, § 130003(b)(3). See 1994 Amendment note below.

1994—Par. (1). Pub. L. 103–322, § 130003(b)(3), as amended by Pub. L. 104–208, § 671(a)(2), substituted ''(K), or (S)'' for ''or (K)''.

1986—Par. (4). Pub. L. 99–603 added par. (4).

1981—Pub. L. 97–116 permitted certain exchange visitors who are not subject to a requirement of returning to their home countries for two years, or who have had such requirement waived, to adjust to a visitor or diplomat status, prohibited the adjustment of nonimmigrant status by fiancee or fiance nonimmigrants, and specifically precluded the change of status with respect to doctors who have entered the United States as exchange visitors for graduate medical training, even if they have received a waiver of the two-year foreign residence requirement.

1961—Pub. L. 87–256 inserted references to paragraph (15)(J) of section 1101(a) of this title in two places.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(b)(2) 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 671(a)(2) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) 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.

§ 1259. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972

A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 1182(a)(3)(E) of this title or under section 1182(a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to January 1, 1972;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship and is not deportable under section 1227(a)(4)(B) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 249, 66 Stat. 219; Pub. L. 85–616, Aug. 8, 1958, 72 Stat. 546; Pub. L. 89–236, § 19, Oct. 3, 1965, 79 Stat. 920; Pub. L. 99–603, title II, § 203(a), Nov. 6, 1986, 100 Stat. 3405; Pub. L. 100–525, § 2(j), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–649, title VI, § 603(a)(14), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104–132, title IV, § 413(e), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, § 308(g)(10)(C), Sept. 30, 1996, 110 Stat. 3009–625.)

AMENDMENTS

1996—Par. (d). Pub. L. 104–208 substituted ''section 1227(a)(4)(B)'' for ''section 1251(a)(4)(B)''.

Pub. L. 104–132 inserted ''and is not deportable under section 1251(a)(4)(B) of this title'' after ''ineligible to citizenship''.

1990—Pub. L. 101–649 substituted ''1182(a)(3)(E)'' for ''1182(a)(33)''.

1988—Pub. L. 100–525 amended Pub. L. 99–603. See 1986 Amendment note below.

1986—Pub. L. 99–603, as amended by Pub. L. 100–525, inserted ''under section 1182(a)(33) of this title or'' in introductory provisions and substituted ''January 1, 1972'' for ''June 30, 1948'' in section heading and in par. (a).

1965—Pub. L. 89–236 substituted ''June 30, 1948'' for ''June 28, 1940''.

1958—Pub. L. 85–616 permitted record of lawful admission to be made in the case of aliens who entered the United States prior to June 28, 1940, authorized the record to be made as of the date of the approval of the application for those who entered subsequent to July 1, 1924, and prior to June 28, 1940, and substituted provisions requiring the alien to satisfy the Attorney General that he is not inadmissible under section 1182(a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens for provisions which required the alien to satisfy the Attorney General that he was not subject to deportation.

EFFECTIVE DATE OF 1996 AMENDMENTS

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.

Amendment by Pub. L. 104–132 effective Apr. 24, 1996, and applicable to applications filed before, on, or after such date if final action not yet taken on them before such date, see section 413(g) of Pub. L. 104–132, set out as a note under section 1253 of this title.

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 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.

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.

APPLICABILITY OF NUMERICAL LIMITATIONS

Section 203(c) of Pub. L. 99–603 provided that: ''The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to aliens provided lawful permanent resident status under section 249 of that Act [8 U.S.C. 1259].''

§ 1260. Removal of aliens falling into distress

The Attorney General may remove from the United States any alien who falls into distress or who needs public aid from causes arising subsequent to his entry, and is desirous of being so removed, to the native country of such alien, or to the country from which he came, or to the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him, at the expense of the appropriation for the enforcement of this chapter. Any alien so removed shall be ineligible to apply for or receive a visa or other documentation for readmission, or to apply for admission to the United States except with the prior approval of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 5, § 250, 66 Stat. 219.)

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.

PART VI—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEN

§ 1281. Alien crewmen

(a) Arrival; submission of list; exceptions

Upon arrival of any vessel or aircraft in the United States from any place outside the United

States it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof to deliver to an immigration officer at the port of arrival (1) a complete, true, and correct list containing the names of all aliens employed on such vessel or aircraft, the positions they respectively hold in the crew of the vessel or aircraft, when and where they were respectively shipped or engaged, and those to be paid off or discharged in the port of arrival; or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(b) Reports of illegal landings

It shall be the duty of any owner, agent, consignee, master, or commanding officer of any vessel or aircraft to report to an immigration officer, in writing, as soon as discovered, all cases in which any alien crewman has illegally landed in the United States from the vessel or aircraft, together with a description of such alien and any information likely to lead to his apprehension.

(c) Departure; submission of list; exceptions

Before the departure of any vessel or aircraft from any port in the United States, it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof, to deliver to an immigration officer at that port (1) a list containing the names of all alien employees who were not employed thereon at the time of the arrival at that port but who will leave such port thereon at the time of the departure of such vessel or aircraft and the names of those, if any, who have been paid off or discharged, and of those, if any, who have deserted or landed at that port, or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(d) Violations

In case any owner, agent, consignee, master, or commanding officer shall fail to deliver complete, true, and correct lists or reports of aliens, or to report cases of desertion or landing, as required by subsections (a), (b), and (c) of this section, such owner, agent, consignee, master, or commanding officer, shall, if required by the Attorney General, pay to the Commissioner the sum of $200 for each alien concerning whom such lists are not delivered or such reports are not made as required in the preceding subsections. In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, consignee, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel. No such vessel or aircraft shall be granted clearance from any port at which it arrives pending the determination of the question of the liability to the payment of such fine, and if such fine is imposed, while it remains unpaid. No such fine shall be remitted or refunded. Clearance may be granted prior to the determination of such question upon deposit of a bond or a sum sufficient to cover such fine.

(e) Regulations

The Attorney General is authorized to prescribe by regulations the circumstances under which a vessel or aircraft shall be deemed to be arriving in, or departing from the United States or any port thereof within the meaning of any provision of this part.

(June 27, 1952, ch. 477, title II, ch. 6, § 251, 66 Stat. 219; Pub. L. 101–649, title II, § 203(b), Nov. 29, 1990, 104 Stat. 5018; Pub. L. 102–232, title III, § 303(a)(3), Dec. 12, 1991, 105 Stat. 1746.)

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–232 substituted ''consignee'' for ''charterer'' after ''the owner, agent,'' in second sentence.

1990—Subsec. (d). Pub. L. 101–649 substituted ''pay to the Commissioner the sum of $200'' for ''pay to the collector of customs of any customs district in which the vessel or aircraft may at any time be found the sum of $10'' and inserted after first sentence ''In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, charterer, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel.''

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 applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, 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.

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Amendment by section 203(b) of Pub. L. 101–649 not to affect performance of longshore work in United States by citizens or nationals of United States, see section 203(a)(2) of Pub. L. 101–649, set out as a note under section 1288 of this title.

§ 1282. Conditional permits to land temporarily

(a) Period of time

No alien crewman shall be permitted to land temporarily in the United States except as pro-

vided in this section and sections 1182(d)(3), (5) and 1283 of this title. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15)(D) of section 1101(a) of this title and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b) of this section, and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Revocation; expenses of detention

Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be removed from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so removed, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 1229a of this title to cases falling within the provisions of this subsection.

(c) Penalties

Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued under subsection (a) of this section shall be fined under title 18 or imprisoned not more than 6 months, or both.

(June 27, 1952, ch. 477, title II, ch. 6, § 252, 66 Stat. 220; Pub. L. 101–649, title V, § 543(b)(1), Nov. 29, 1990, 104 Stat. 5059; Pub. L. 102–232, title III, § 306(c)(3), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104–208, div. C, title III, § 308(e)(2)(E), (g)(5)(A)(i), Sept. 30, 1996, 110 Stat. 3009–620, 3009–623.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208, § 308(g)(5)(A)(i), substituted ''section 1229a'' for ''section 1252''.

Pub. L. 104–208, § 308(e)(2)(E), substituted ''removed'' for ''deported'' in two places.

1991—Subsec. (c). Pub. L. 102–232 substituted ''fined under title 18'' for ''fined not more than $2,000 (or, if greater, the amount provided under title 18)''.

1990—Subsec. (c). Pub. L. 101–649 substituted ''shall be fined not more than $2,000 (or, if greater, the amount provided under title 18) or imprisoned not more than 6 months'' for ''shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months''.

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 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 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1283. Hospital treatment of alien crewmen afflicted with certain diseases

An alien crewman, including an alien crewman ineligible for a conditional permit to land under section 1282(a) of this title, who is found on arrival in a port of the United States to be afflicted with any of the disabilities or diseases mentioned in section 1285 of this title, shall be placed in a hospital designated by the immigration officer in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, commanding officer, or master of the vessel or aircraft, and not to be deducted from the crewman's wages. No such vessel or aircraft shall be granted clearance until such expenses are paid, or their payment appropriately guaranteed, and the collector of customs is so notified by the immigration officer in charge. An alien crewman suspected of being afflicted with any such disability or disease may be removed from the vessel or aircraft on which he arrived to an immigration station, or other appropriate place, for such observation as will enable the examining surgeons to determine definitely whether or not he is so afflicted, all expenses connected therewith to be borne in the manner hereinbefore prescribed. In cases in which it appears to the satisfaction of the immigration officer in charge that it will not be possible within a reasonable time to effect a cure, the return of the alien crewman shall be enforced on, or at the expense of, the transportation line on which he came, upon such conditions as the Attorney General shall prescribe, to insure that the alien shall be properly cared for and protected, and that the spread of contagion shall be guarded against.

(June 27, 1952, ch. 477, title II, ch. 6, § 253, 66 Stat. 221.)

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.

§ 1284. Control of alien crewmen

(a) Penalties for failure

The owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof who fails (1) to detain on board the vessel, or in the case of an aircraft to detain at a place specified by an immigration officer at the expense of the airline, any alien crewman employed thereon until an immigration officer has completely inspected such alien crewman, including a physical examination by the medical examiner, or (2) to detain any alien crewman on board the vessel, or in the case of an aircraft at a place specified by an immigration officer at the expense of the airline, after such inspection unless a conditional permit to land temporarily has been granted such alien crewman under section 1282 of this title or unless an alien crewman has been permitted to land temporarily under section 1182(d)(5) or 1283 of this title for medical or hospital treatment, or (3) to remove such alien crewman if required to do so by an immigration officer, whether such removal requirement is imposed before or after the crewman is permitted to land temporarily under section 1182(d)(5), 1282, or 1283 of this title, shall pay to the Commissioner the sum of $3,000 for each alien crewman in respect to whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The Attorney General may, upon application in writing therefor, mitigate such penalty to not less than $500 for each alien crewman in respect of whom such failure occurs, upon such terms as he shall think proper.

(b) Prima facie evidence against transportation line

Except as may be otherwise prescribed by regulations issued by the Attorney General, proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived in the United States from any place outside thereof, or that he was reported by the master or commanding officer of such vessel or aircraft as a deserter, shall be prima facie evidence of a failure to detain or remove such alien crewman.

(c) Removal on other than arriving vessel or aircraft; expenses

If the Attorney General finds that removal of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be removed from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such removal, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

(June 27, 1952, ch. 477, title II, ch. 6, § 254, 66 Stat. 221; Pub. L. 101–649, title V, § 543(a)(4), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 102–232, title III, § 306(c)(4)(C), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104–208, div. C, title III, § 308(e)(1)(I), (2)(F), (12), Sept. 30, 1996, 110 Stat. 3009–619, 3009–620.)

AMENDMENTS

1996—Pub. L. 104–208 substituted ''remove'' for ''deport'' in subsecs. (a) and (b), ''removal'' for ''deportation'' wherever appearing in subsecs. (a) and (c), and ''removed'' for ''deported'' in subsec. (c).

1991—Subsec. (a). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' before period at end of penultimate sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000'' and ''$500'' for ''$200''.

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 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 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1285. Employment on passenger vessels of aliens afflicted with certain disabilities

It shall be unlawful for any vessel or aircraft carrying passengers between a port of the United States and a port outside thereof to have employed on board upon arrival in the United States any alien afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis in any

form, leprosy, or any dangerous contagious disease. If it appears to the satisfaction of the Attorney General, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel or aircraft and that the existence of such affliction might have been detected by means of a competent medical examination at such time, the owner, commanding officer, agent, consignee, or master thereof shall pay for each alien so afflicted to the Commissioner the sum of $1,000. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums or of a bond approved by the Commissioner with sufficient surety to secure the payment thereof. Any such fine may, in the discretion of the Attorney General, be mitigated or remitted.

(June 27, 1952, ch. 477, title II, ch. 6, § 255, 66 Stat. 222; Pub. L. 101–649, title V, § 543(a)(5), Nov. 29, 1990, 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''Commissioner the sum of $1,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $50'' in second sentence, and ''Commissioner'' for ''collector of customs'' in third sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1286. Discharge of alien crewmen; penalties

It shall be unlawful for any person, including the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft, to pay off or discharge any alien crewman, except an alien lawfully admitted for permanent residence, employed on board a vessel or aircraft arriving in the United States without first having obtained the consent of the Attorney General. If it shall appear to the satisfaction of the Attorney General that any alien crewman has been paid off or discharged in the United States in violation of the provisions of this section, such owner, agent, consignee, charterer, master, commanding officer, or other person, shall pay to the Commissioner the sum of $3,000 for each such violation. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond approved by the Commissioner with sufficient surety to secure the payment thereof. Such fine may, in the discretion of the Attorney General, be mitigated to not less than $1,500 for each violation, upon such terms as he shall think proper.

(June 27, 1952, ch. 477, title II, ch. 6, § 256, 66 Stat. 223; Pub. L. 101–649, title V, § 543(a)(6), Nov. 29, 1990, 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the violation occurred the sum of $1,000'' in second sentence, ''Commissioner'' for ''collector of customs'' in third sentence, and ''$1,500'' for ''$500'' in fourth sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1287. Alien crewmen brought into the United States with intent to evade immigration laws; penalties

Any person, including the owner, agent, consignee, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof, who shall knowingly sign on the vessel's articles, or bring to the United States as one of the crew of such vessel or aircraft, any alien, with intent to permit or assist such alien to enter or land in the United States in violation of law, or who shall falsely and knowingly represent to a consular officer at the time of application for visa, or to the immigration officer at the port of arrival in the United States, that such alien is a bona fide member of the crew employed in any capacity regularly required for normal operation and services aboard such vessel or aircraft, shall be liable to a penalty not exceeding $10,000 for each such violation, for which sum such vessel or aircraft shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

(June 27, 1952, ch. 477, title II, ch. 6, § 257, 66 Stat. 223; Pub. L. 101–649, title V, § 543(a)(7), Nov. 29, 1990, 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''$10,000'' for ''$5,000''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1288. Limitations on performance of longshore work by alien crewmen

(a) In general

For purposes of section 1101(a)(15)(D)(i) of this title, the term ''normal operation and service on board a vessel'' does not include any activity that is longshore work (as defined in subsection (b) of this section), except as provided under subsection (c), (d), or (e) of this section.

(b) "Longshore work" defined

(1) In general

In this section, except as provided in paragraph (2), the term ''longshore work'' means any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

(2) Exception for safety and environmental protection

The term ''longshore work'' does not include the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of title 46 (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 1321 of title 33, section 4106 of the Oil Pollution Act of 1990, or section 5103(b), 5104, 5106, 5107, or 5110 of title 49 prescribed regulations which govern—

(A) the handling or stowage of such cargo,

(B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and

(C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.

(3) Construction

Nothing in this section shall be construed as broadening, limiting, or otherwise modifying the meaning or scope of longshore work for purposes of any other law, collective bargaining agreement, or international agreement.

(c) Prevailing practice exception

(1) Subsection (a) of this section shall not apply to a particular activity of longshore work in and about a local port if—

(A)(i) there is in effect in the local port one or more collective bargaining agreements each covering at least 30 percent of the number of individuals employed in performing longshore work and (ii) each such agreement (covering such percentage of longshore workers) permits the activity to be performed by alien crewmen under the terms of such agreement; or

(B) there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work, and an employer of alien crewmen (or the employer's designated agent or representative) has filed with the Secretary of Labor at least 14 days before the date of performance of the activity (or later, if necessary due to an unanticipated emergency, but not later than the date of performance of the activity) an attestation setting forth facts and evidence to show that—

(i) the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port as of the date of filing of the attestation and that the use of alien crewmen for such activity—

(I) is not during a strike or lockout in the course of a labor dispute, and

(II) is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(ii) notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice of the attestation has been provided to longshore workers employed at the local port.

In applying subparagraph (B) in the case of a particular activity of longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel, the attestation shall be required to be filed only if the Secretary of Labor finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of such particular activity is not described in clause (i) of such subparagraph.

(2) Subject to paragraph (4), an attestation under paragraph (1) shall—

(A) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(B) apply to aliens arriving in the United States during such 1-year period if the owner, agent, consignee, master, or commanding officer states in each list under section 1281 of this title that it continues to comply with the conditions in the attestation.

(3) An owner, agent, consignee, master, or commanding officer may meet the requirements under this subsection with respect to more than one alien crewman in a single list.

(4)(A) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying owners, agents, consignees, masters, or commanding officers which have filed lists for nonimmigrants described in section 1101(a)(15)(D)(i) of this title with respect to whom an attestation under paragraph (1) or subsection (d)(1) of this section is made and, for each such entity, a copy of the entity's attestation under paragraph (1) or subsection (d)(1) of this section (and accompanying documentation) and each such list filed by the entity.

(B)(i) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting an entity's failure to meet conditions attested to, an entity's misrepresentation of a material fact in an attestation, or, in the case described in the last sentence of paragraph (1), whether the performance of the particular activity is or is not described in paragraph (1)(B)(i).

(ii) Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appro-

priate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary).

(iii) The Secretary shall promptly conduct an investigation under this subparagraph if there is reasonable cause to believe that an entity fails to meet conditions attested to, an entity has misrepresented a material fact in the attestation, or, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in paragraph (1)(B)(i).

(C)(i) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to an attestation, a complaining party may request that the activities attested to by the employer cease during the hearing process described in subparagraph (D). If such a request is made, the attesting employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D).

(ii) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to a matter under the last sentence of paragraph (1), a complaining party may request that the activities of the employer cease during the hearing process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1). If such a request is made, the employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1).

(D) Under the process established under subparagraph (B), the Secretary shall provide, within 180 days after the date a complaint is filed (or later for good cause shown), for a determination as to whether or not a basis exists to make a finding described in subparagraph (E). The Secretary shall provide notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(E)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an entity has failed to meet a condition attested to or has made a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 for each alien crewman performing unauthorized longshore work) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not permit the vessels owned or chartered by such entity to enter any port of the United States during a period of up to 1 year.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, that, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in subparagraph (B)(i), the Secretary shall notify the Attorney General of such finding and, thereafter, the attestation described in paragraph (1) shall be required of the employer for the performance of the particular activity.

(F) A finding by the Secretary of Labor under this paragraph that the performance of an activity by alien crewmen is not permitted under the prevailing practice of a local port shall preclude for one year the filing of a subsequent attestation concerning such activity in the port under paragraph (1).

(5) Except as provided in paragraph (5) of subsection (d) of this section, this subsection shall not apply to longshore work performed in the State of Alaska.

(d) State of Alaska exception

(1) Subsection (a) of this section shall not apply to a particular activity of longshore work at a particular location in the State of Alaska if an employer of alien crewmen has filed an attestation with the Secretary of Labor at least 30 days before the date of the first performance of the activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time) setting forth facts and evidence to show that—

(A) the employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided under clauses (ii) and (iii) of subparagraph (D), except that—

(i) wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization described in subparagraph (D)(i), the employer may request longshore workers from only one of such contract stevedoring companies, and

(ii) a request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 932 of title 33;

(B) the employer will employ all those United States longshore workers made available in response to the request made pursuant to subparagraph (A) who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location;

(C) the use of alien crewmembers for such activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and

(D) notice of the attestation has been provided by the employer to—

(i) labor organizations which have been recognized as exclusive bargaining rep-

resentatives of United States longshore workers within the meaning of the National Labor Relations Act [29 U.S.C. 151 et seq.] and which make available or intend to make available workers to the particular location where the longshore work is to be performed,

(ii) contract stevedoring companies which employ or intend to employ United States longshore workers at that location, and

(iii) operators of private docks at which the employer will use longshore workers.

(2)(A) An employer filing an attestation under paragraph (1) who seeks to use alien crewmen to perform longshore work shall be responsible while at[1] the attestation is valid to make bona fide requests for United States longshore workers under paragraph (1)(A) and to employ United States longshore workers, as provided in paragraph (1)(B), before using alien crewmen to perform the activity or activities specified in the attestation, except that an employer shall not be required to request longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers to the location at which the longshore work is to be performed.

(B) If a party that has provided such notice subsequently notifies the employer in writing that it is prepared to make available United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity to the location at which the longshore work is to be performed, then the employer's obligations to that party under subparagraphs (A) and (B) of paragraph (1) shall begin 60 days following the issuance of such notice.

(3)(A) In no case shall an employer filing an attestation be required—

(i) to hire less than a full work unit of United States longshore workers needed to perform the longshore activity;

(ii) to provide overnight accommodations for the longshore workers while employed; or

(iii) to provide transportation to the place of work, except where—

(I) surface transportation is available;

(II) such transportation may be safely accomplished;

(III) travel time to the vessel does not exceed one-half hour each way; and

(IV) travel distance to the vessel from the point of embarkation does not exceed 5 miles.

(B) In the cases of Wide Bay, Alaska, and Klawock/Craig, Alaska, the travel times and travel distances specified in subclauses (III) and (IV) of subparagraph (A)(iii) shall be extended to 45 minutes and 7½ miles, respectively, unless the party responding to the request for longshore workers agrees to the lesser time and distance limitations specified in those subclauses.

(4) Subject to subparagraphs (A) through (D) of subsection (c)(4) of this section, attestations filed under paragraph (1) of this subsection shall—

(A) expire at the end of the 1-year period beginning on the date the employer anticipates the longshore work to begin, as specified in the attestation filed with the Secretary of Labor, and

(B) apply to aliens arriving in the United States during such 1-year period if the owner, agent, consignee, master, or commanding officer states in each list under section 1281 of this title that it continues to comply with the conditions in the attestation.

(5)(A) Except as otherwise provided by subparagraph (B), subsection (c)(3) of this section and subparagraphs (A) through (E) of subsection (c)(4) of this section shall apply to attestations filed under this subsection.

(B) The use of alien crewmen to perform longshore work in Alaska consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall be governed by the provisions of subsection (c) of this section.

(6) For purposes of this subsection—

(A) the term ''contract stevedoring companies'' means those stevedoring companies licensed to do business in the State of Alaska that meet the requirements of section 932 of title 33;

(B) the term ''employer'' includes any agent or representative designated by the employer; and

(C) the terms ''qualified'' and ''available in sufficient numbers'' shall be defined by reference to industry standards in the State of Alaska, including safety considerations.

(e) Reciprocity exception

(1) In general

Subject to the determination of the Secretary of State pursuant to paragraph (2), the Attorney General shall permit an alien crewman to perform an activity constituting longshore work if—

(A) the vessel is registered in a country that by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels; and

(B) nationals of a country (or countries) which by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels hold a majority of the ownership interest in the vessel.

(2) Establishment of list

The Secretary of State shall, in accordance with section 553 of title 5, compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. By not later than 90 days after November 29, 1990, the Secretary shall publish a notice of proposed rulemaking to establish such list. The Secretary shall first establish such list by not later than 180 days after November 29, 1990.

(3) "In practice" defined

For purposes of this subsection, the term ''in practice'' refers to an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof.

[1] So in original. The word ''at'' probably should not appear.

(June 27, 1952, ch. 477, title II, ch. 6, § 258, as added Pub. L. 101–649, title II, § 203(a)(1), Nov. 29, 1990, 104 Stat. 5015; amended Pub. L. 102–232, title III, § 303(a)(4), Dec. 12, 1991, 105 Stat. 1747; Pub. L. 103–198, § 8(a), (b), Dec. 17, 1993, 107 Stat. 2313, 2315; Pub. L. 103–206, title III, § 323(a), (b), Dec. 20, 1993, 107 Stat. 2428, 2430; Pub. L. 103–416, title II, § 219(f), (gg), Oct. 25, 1994, 108 Stat. 4317, 4319; Pub. L. 104–208, div. C, title VI, § 671(e)(4)(B), Sept. 30, 1996, 110 Stat. 3009–723.)

REFERENCES IN TEXT

Section 4106 of the Oil Pollution Act of 1990, referred to in subsec. (b)(2), is section 4106 of Pub. L. 101–380, title IV, Aug. 18, 1990, 104 Stat. 513, which amended section 1228 of Title 33, Navigation and Navigable Waters, and sections 6101 and 9101 of Title 46, Shipping.

The National Labor Relations Act, referred to in subsec. (d)(1)(D)(i), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''section 5103(b), 5104, 5106, 5107, or 5110 of title 49'' for ''section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805)''.

1994—Subsecs. (a), (c)(4)(A), (5). Pub. L. 103–416, § 219(gg), repealed Pub. L. 103–198, § 8(b), which had made amendments identical to those made by Pub. L. 103–206, § 323(b). See 1993 Amendment note below.

Subsec. (d). Pub. L. 103–416, § 219(gg), repealed Pub. L. 103–198, § 8(a), which had made an amendment substantially identical to that made by Pub. L. 103–206, § 323(a). See 1993 Amendment note below.

Subsec. (d)(3)(B). Pub. L. 103–416, § 219(f), substituted ''subparagraph (A)(iii)'' for ''subparagraph (A)''.

Subsec. (e). Pub. L. 103–416, § 219(gg), repealed Pub. L. 103–198, § 8(a), which had made an amendment substantially identical to that made by Pub. L. 103–206, § 323(a). See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–206, § 323(b)(1), substituted ''subsection (c), (d), or (e) of this section'' for ''subsection (c) of this section or subsection (d) of this section''. Pub. L. 103–198, § 8(b)(1), which amended subsec. (a) identically, was repealed by Pub. L. 103–416, § 219(gg).

Subsec. (c)(4)(A). Pub. L. 103–206, § 323(b)(2), inserted ''or subsection (d)(1) of this section'' after ''paragraph (1)'' in two places. Pub. L. 103–198, § 8(b)(2), which amended subpar. (A) identically, was repealed by Pub. L. 103–416, § 219(gg).

Subsec. (c)(5). Pub. L. 103–206, § 323(b)(3), added par. (5). Pub. L. 103–198, § 8(b)(3), which amended subsec. (c) identically, was repealed by Pub. L. 103–416, § 219(gg).

Subsecs. (d), (e). Pub. L. 103–206, § 323(a), added subsec. (d) and redesignated former subsec. (d) as (e). Pub. L. 103–198, § 8(a), which made substantially identical amendments to this section, was repealed by Pub. L. 103–416, § 219(gg).

1991—Subsec. (c)(2)(B). Pub. L. 102–232 substituted ''each list'' for ''each such list''.

EFFECTIVE DATE OF 1994 AMENDMENT

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.

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

Section applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

REGULATIONS

Section 323(c) of Pub. L. 103–206 provided that:

''(1) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this section [amending this section].

''(2) Attestations filed pursuant to section 258(c) (8 U.S.C. 1288(c)) with the Secretary of Labor before the date of enactment of this Act [Dec. 20, 1993] shall remain valid until 60 days after the date of issuance of final regulations by the Secretary under this section.''

Similar provisions were contained in Pub. L. 103–198, § 8(c), Dec. 17, 1993, 107 Stat. 2315, prior to repeal by Pub. L. 103–416, title II, § 219(gg), Oct. 25, 1994, 108 Stat. 4319.

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.

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Section 203(a)(2) of Pub. L. 101–649 provided that: ''This section [enacting this section, amending section 1101 of this title, and enacting provisions set out as a note under section 1101 of this title] does not affect the performance of longshore work in the United States by citizens or nationals of the United States.''

PART VII—REGISTRATION OF ALIENS

§ 1301. Alien seeking entry; contents

No visa shall be issued to any alien seeking to enter the United States until such alien has been registered in accordance with section 1201(b) of this title.

(June 27, 1952, ch. 477, title II, ch. 7, § 261, 66 Stat. 223; Pub. L. 99–653, § 8, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, § 8(g), Oct. 24, 1988, 102 Stat. 2617.)

AMENDMENTS

1988—Pub. L. 100–525 made technical correction to Pub. L. 99–653. See 1986 Amendment note below.

1986—Pub. L. 99–653, as amended by Pub. L. 100–525, amended section generally, striking out ''and fingerprinted'' after ''has been registered'' and substituting ''section 1201(b) of this title'' for ''section 1201(b) of this title, unless such alien has been exempted from being fingerprinted as provided in that section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

§ 1302. Registration of aliens

(a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United

States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) of this section in the case of any nonimmigrant.

(June 27, 1952, ch. 477, title II, ch. 7, § 262, 66 Stat. 224; Pub. L. 99–653, § 9, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, § 8(h), Oct. 24, 1988, 102 Stat. 2617; Pub. L. 103–416, title II, § 219(n), Oct. 25, 1994, 108 Stat. 4317.)

REFERENCES IN TEXT

The Alien Registration Act, 1940, referred to in subsecs. (a) and (b), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Sections 30 and 31 of that act were classified to sections 451 and 452 of this title and were repealed by section 403(a)(39) of act June 27, 1952.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–416 substituted ''subsections (a) and (b)'' for ''subsection (a) and (b)''.

1988—Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Pub. L. 99–653, § 9, as amended by Pub. L. 100–525, added subsec. (c). As originally enacted, Pub. L. 99–653, § 9, amended subsec. (a) of this section by striking out ''section 1201(b) of this title or'' after ''registered and fingerprinted under''. Pub. L. 100–525 revised Pub. L. 99–653, § 9, so as to add subsec. (c) and eliminate the original amendment of subsec. (a), thereby restoring the words ''section 1201(b) of this title or''. See Effective Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, 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.

§ 1303. Registration of special groups

(a) Notwithstanding the provisions of sections 1301 and 1302 of this title, the Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of removal, (5) aliens who are or have been on criminal probation or criminal parole within the United States, and (6) aliens of any other class not lawfully admitted to the United States for permanent residence.

(b) The provisions of section 1302 of this title and of this section shall not be applicable to any alien who is in the United States as a nonimmigrant under section 1101(a)(15)(A) or (a)(15)(G) of this title until the alien ceases to be entitled to such a nonimmigrant status.

(June 27, 1952, ch. 477, title II, ch. 7, § 263, 66 Stat. 224; Pub. L. 104–208, div. C, title III, §§ 308(e)(1)(J), 323, Sept. 30, 1996, 110 Stat. 3009–619, 3009–629.)

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–208, § 308(e)(1)(J), substituted ''removal'' for ''deportation''.

Subsec. (a)(5), (6). Pub. L. 104–208, § 323, added cl. (5) and redesignated former cl. (5) as (6).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(1)(J) 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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1304. Forms for registration and fingerprinting

(a) Preparation; contents

The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 1301 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 1302 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he

expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

(b) Confidential nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only (1) pursuant to section 1357(f)(2) of this title, and (2) to such persons or agencies as may be designated by the Attorney General.

(c) Information under oath

Every person required to apply for the registration of himself or another under this subchapter shall submit under oath the information required for such registration. Any person authorized under regulations issued by the Attorney General to register aliens under this subchapter shall be authorized to administer oaths for such purpose.

(d) Certificate of alien registration or alien receipt card

Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General.

(e) Personal possession of registration or receipt card; penalties

Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both.

(f) Alien's social security account number

Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service.

(June 27, 1952, ch. 477, title II, ch. 7, § 264, 66 Stat. 224; Pub. L. 99–653, § 10, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, § 8(i), Oct. 24, 1988, 102 Stat. 2617; Pub. L. 101–649, title V, § 503(b)(2), Nov. 29, 1990, 104 Stat. 5049; Pub. L. 104–208, div. C, title IV, § 415, Sept. 30, 1996, 110 Stat. 3009–669.)

REFERENCES IN TEXT

The Alien Registration Act, 1940, referred to in subsec. (d), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Title III of that act, which related to register and fingerprinting of aliens, was classified to sections 451 to 460 of this title, was repealed by section 403(a)(39) of act June 27, 1952.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–208 added subsec. (f).

1990—Subsec. (b). Pub. L. 101–649 inserted ''(1) pursuant to section 1357(f)(2) of this title, and (2)'' after ''only''.

1988—Subsec. (a). Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–653, as amended by Pub. L. 100–525, amended first sentence generally, striking out ''and fingerprinting'' before ''of aliens under section 1301''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 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.

§ 1305. Notices of change of address

(a) Notification of change

Each alien required to be registered under this subchapter who is within the United States shall notify the Attorney General in writing of each change of address and new address within ten days from the date of such change and furnish with such notice such additional information as the Attorney General may require by regulation.

(b) Current address of natives of any one or more foreign states

The Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

(c) Notice to parent or legal guardian

In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be given to such parent or legal guardian.

(June 27, 1952, ch. 477, title II, ch. 7, § 265, 66 Stat. 225; Pub. L. 97–116, § 11, Dec. 29, 1981, 95 Stat. 1617; Pub. L. 100–525, § 9(*o*), Oct. 24, 1988, 102 Stat. 2620.)

AMENDMENTS

1988—Pub. L. 100–525 inserted ''Notices of change of address'' as section catchline.

1981—Pub. L. 97–116 amended section generally and in adding subsection designations struck out the annual registration requirement for permanent resident aliens and the registration requirement for those aliens in a lawful temporary residence who were to notify the Attorney General in writing of an address every three months while residing in the United States and inserted provision authorizing the Attorney General, in his discretion and upon ten days notice, to require the natives of any one or more foreign states who are in

the United States and required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as required.

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.

§ 1306. Penalties

(a) Willful failure to register

Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Failure to notify change of address

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be taken into custody and removed in the manner provided by part IV of this subchapter, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(c) Fraudulent statements

Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be removed in the manner provided in part IV of this subchapter.

(d) Counterfeiting

Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof, except when and as authorized under such rules and regulations as may be prescribed by the Attorney General, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both.

(June 27, 1952, ch. 477, title II, ch. 7, § 266, 66 Stat. 225; Pub. L. 104–208, div. C, title III, § 308(e)(2)(G), (g)(9)(A), Sept. 30, 1996, 110 Stat. 3009–620, 3009–624.)

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–208 substituted ''removed'' for ''deported'' and ''part IV'' for ''Part V''.

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.

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.

PART VIII—GENERAL PENALTY PROVISIONS

§ 1321. Prevention of unauthorized landing of aliens

(a) Failure to report; penalties

It shall be the duty of every person, including the owners, masters, officers, and agents of vessels, aircraft, transportation lines, or international bridges or toll roads, other than transportation lines which may enter into a contract as provided in section 1223 of this title, bringing an alien to, or providing a means for an alien to come to, the United States (including an alien crewman whose case is not covered by section 1284(a) of this title) to prevent the landing of such alien in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be liable to a penalty to be imposed by the Attorney General of $3,000 for each such violation, which may, in the discretion of the Attorney General, be remitted or mitigated by him in accordance with such proceedings as he shall by regulation prescribe. Such penalty shall be a lien upon the vessel or aircraft whose owner, master, officer, or agent violates the provisions of this section, and such vessel or aircraft may be libeled therefor in the appropriate United States court.

(b) Prima facie evidence

Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

(c) Liability of owners and operators of international bridges and toll roads

(1) Any owner or operator of a railroad line, international bridge, or toll road who establishes to the satisfaction of the Attorney General that the person has acted diligently and

reasonably to fulfill the duty imposed by subsection (a) of this section shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a) of this section. The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section (within the meaning of paragraph (1) of this subsection).

(June 27, 1952, ch. 477, title II, ch. 8, § 271, 66 Stat. 226; Pub. L. 99–603, title I, § 114, Nov. 6, 1986, 100 Stat. 3383; Pub. L. 101–649, title V, § 543(a)(8), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 104–208, div. C, title III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted ''section 1223'' for ''section 1228''.

1990—Subsec. (a). Pub. L. 101–649 substituted ''$3,000'' for ''$1,000''.

1986—Subsec. (c). Pub. L. 99–603 added subsec. (c).

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 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1322. Bringing in aliens subject to denial of admission on a health-related ground; persons liable; clearance papers; exceptions; "person" defined

(a) Any person who shall bring to the United States an alien (other than an alien crewman) who is inadmissible under section 1182(a)(1) of this title shall pay to the Commissioner for each and every alien so afflicted the sum of $3,000 unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of the condition causing inadmissibility could not have been detected by the exercise of due diligence prior to the alien's embarkation.

(b) No vessel or aircraft shall be granted clearance papers pending determination of the question of liability to the payment of any fine under this section, or while the fines remain unpaid, nor shall such fines be remitted or refunded; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the Commissioner.

(c) Nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of entry in the United States aliens who are entitled by law to exemption from the provisions of section 1182(a) of this title.

(d) As used in this section, the term ''person'' means the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft.

(June 27, 1952, ch. 477, title II, ch. 8, § 272, 66 Stat. 226; Pub. L. 89–236, § 18, Oct. 3, 1965, 79 Stat. 920; Pub. L. 101–649, title V, § 543(a)(9), title VI, § 603(a)(15), Nov. 29, 1990, 104 Stat. 5058, 5083; Pub. L. 102–232, title III, § 307(*l*)(7), Dec. 12, 1991, 105 Stat. 1757; Pub. L. 103–416, title II, § 219(*o*), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title III, § 308(d)(3)(A), (4)(I)(i), Sept. 30, 1996, 110 Stat. 3009–617, 3009–618.)

AMENDMENTS

1996—Pub. L. 104–208, § 308(d)(4)(I)(i)(I), amended section catchline.

Subsec. (a). Pub. L. 104–208, § 308(d)(3)(A), (4)(I)(i)(II), substituted ''inadmissible'' for ''excludable'' and ''condition causing inadmissibility'' for ''excluding condition''.

Subsec. (c). Pub. L. 104–208, § 308(d)(4)(I)(i)(III), struck out ''excluding'' after ''exemption from the''.

1994—Subsec. (a). Pub. L. 103–416 struck out comma after ''every alien so afflicted''.

1991—Subsec. (a). Pub. L. 102–232 struck out comma before ''shall pay''.

1990—Pub. L. 101–649, § 603(a)(15)(D), substituted ''exclusion on a health-related ground'' for ''disability or afflicted with disease'' in section catchline.

Subsec. (a). Pub. L. 101–649, § 603(a)(15)(A), substituted ''excludable under section 1182(a)(1) of this title'' for ''(1) mentally retarded, (2) insane, (3) afflicted with psychopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict'' and ''the excluding condition'' for ''such disease or disability''.

Pub. L. 101–649, § 543(a)(9)(A), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$1,000''.

Subsec. (b). Pub. L. 101–649, § 603(a)(15)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Any person who shall bring to the United States an alien (other than an alien crewman) afflicted with any mental defect other than those enumerated in subsection (a) of this section, or any physical defect of a nature which may affect his ability to earn a living, as provided in section 1182(a)(7) of this title, shall pay to the Commissioner for each and every alien so afflicted, the sum of $3,000, unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation.''

Pub. L. 101–649, § 543(a)(9)(B), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$250''.

Subsec. (c). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 101–649, § 543(a)(9)(C), substituted ''Commissioner'' for ''collector of customs''.

Subsecs. (d), (e). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1965—Subsec. (a). Pub. L. 89–236 substituted ''mentally retarded'' for ''feeble-minded'', struck out references to epileptics and persons afflicted with tuberculosis and leprosy, and inserted reference to persons afflicted with sexual deviation.

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 1994 AMENDMENT

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.

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

Amendment by section 543(a)(9) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(15) 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 1965 AMENDMENT

Amendment by Pub. L. 89–236 effective, except as otherwise provided, on first day of first month after expiration of thirty days following date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, 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.

§ 1323. Unlawful bringing of aliens into United States

(a) Persons liable

(1) It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this chapter or regulations issued thereunder.

(2) It is unlawful for an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft who is bringing an alien (except an alien crewmember) to the United States to take any consideration to be kept or returned contingent on whether an alien is admitted to, or ordered removed from, the United States.

(b) Evidence

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay to the Commissioner a fine of $3,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, an amount equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter fine to be delivered by the Commissioner to the alien on whose account the assessment is made. No vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

(c) Remission or refund

Except as provided in subsection (e) of this section, such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the

exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

(d) Repealed. Pub. L. 104–208, div. C, title III, § 308(e)(13), Sept. 30, 1996, 110 Stat. 3009–620

(e) Reduction, refund, or waiver

A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

(June 27, 1952, ch. 477, title II, ch. 8, § 273, 66 Stat. 227; Pub. L. 101–649, title II, § 201(b), title V, § 543(a)(10), Nov. 29, 1990, 104 Stat. 5014, 5058; Pub. L. 102–232, title III, § 306(c)(4)(D), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 103–416, title II, §§ 209(a), 216, 219(p), Oct. 25, 1994, 108 Stat. 4312, 4315, 4317; Pub. L. 104–208, div. C, title III, §§ 308(c)(3), (e)(13), 371(b)(8), title VI, § 671(b)(6), (7), Sept. 30, 1996, 110 Stat. 3009–616, 3009–620, 3009–645, 3009–722.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 308(c)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 104–208, § 671(b)(7), made technical amendment to directory language of Pub. L. 103–416, § 209(a)(1). See 1994 Amendment note below.

Pub. L. 104–208, § 671(b)(6), substituted ''remains'' for ''remain''.

Subsec. (d). Pub. L. 104–208, § 371(b)(8), substituted ''immigration judges'' for ''special inquiry officers''.

Pub. L. 104–208, § 308(e)(13), struck out subsec. (d) which read as follows: ''The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States who fails to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer, shall pay to the Commissioner a fine of $3,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The provisions of section 1225 of this title for detention of aliens for examination before immigration judges and the right of appeal provided for in section 1226 of this title shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.''

1994—Subsec. (b). Pub. L. 103–416, § 219(p), in first sentence substituted ''Commissioner'' for ''collector of customs'' before ''to the alien''.

Pub. L. 103–416, § 209(a)(1), as amended by Pub. L. 104–208, § 671(b)(7), substituted ''a fine of $3,000'' for ''the sum of $3,000''.

Pub. L. 103–416, § 209(a)(2), (4), in first sentence substituted ''an amount equal to'' for ''a sum equal to'' and ''such latter fine'' for ''such latter sum'', and in second sentence substituted ''such fine or while such fine'' for ''such sums or while such sums'' and ''cover such fine'' for ''cover such sums''.

Subsec. (c). Pub. L. 103–416, § 209(a)(4), (5), substituted ''Except as provided in subsection (e) of this section, such fine'' for ''Such sums''.

Subsec. (d). Pub. L. 103–416, § 216, amended first sentence generally. Prior to amendment, first sentence read as follows: ''The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the Commissioner the sum of $3,000 for each alien stowaway, in respect of whom any such failure occurs.''

Pub. L. 103–416, § 209(a)(1), which directed that subsec. (d) be amended by substituting ''a fine of $3,000'' for ''the sum of $3000'', was executed in the first sentence by making the substitution for ''the sum of $3,000'', to reflect the probable intent of Congress.

Pub. L. 103–416, § 209(a)(3), in second sentence substituted ''an amount'' for ''a sum'' before ''sufficient to cover such fine''.

Subsec. (e). Pub. L. 103–416, § 209(a)(6), added subsec. (e).

1991—Subsec. (b). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' before period at end of second sentence.

1990—Subsec. (a). Pub. L. 101–649, § 201(b)(1), inserted ''a valid passport and'' before ''an unexpired visa''.

Subsec. (b). Pub. L. 101–649, § 543(a)(10)(A), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000''.

Subsec. (c). Pub. L. 101–649, § 201(b)(2), inserted ''valid passport or'' before ''visa was required''.

Subsec. (d). Pub. L. 101–649, § 543(a)(10)(B), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000'' in first sentence and ''Commissioner'' for ''collector of customs'' in second sentence.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(c)(3), (e)(13) 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)(8) 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.

Amendment by section 671(b)(6), (7) of Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, see section 671(b)(14) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 209(b) of Pub. L. 103–416, as amended by Pub. L. 104–208, div. C, title VI, § 671(b)(8), Sept. 30, 1996, 110 Stat. 3009–722, provided that: ''The amendments made by this section [amending this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994].''

Amendment by section 219(p) 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

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 section 543(a)(10) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(C) It is not a violation of clauses[1] (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 5 years, or both.

[1] So in original. Probably should be ''clause''.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C)(i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) of this section, the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) of this section has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) Authority to arrest

No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) Admissibility of videotaped witness testimony

Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) of this section who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) Outreach program

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

(June 27, 1952, ch. 477, title II, ch. 8, § 274, 66 Stat. 228; Pub. L. 95–582, § 2, Nov. 2, 1978, 92 Stat. 2479; Pub. L. 97–116, § 12, Dec. 29, 1981, 95 Stat. 1617; Pub. L. 99–603, title I, § 112, Nov. 6, 1986, 100 Stat. 3381; Pub. L. 100–525, § 2(d), Oct. 24, 1988, 102 Stat. 2610; Pub. L. 103–322, title VI, § 60024, Sept. 13, 1994, 108 Stat. 1981; Pub. L. 104–208, div. C, title II, §§ 203(a)–(d), 219, title VI, § 671(a)(1), Sept. 30, 1996, 110 Stat. 3009–565, 3009–566, 3009–574, 3009–720; Pub. L. 106–185, § 18(a), Apr. 25, 2000, 114 Stat. 222; Pub. L. 108–458, title V, § 5401, Dec. 17, 2004, 118 Stat. 3737; Pub. L. 109–97, title VII, § 796, Nov. 10, 2005, 119 Stat. 2165.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (a)(1)(C). Pub. L. 109–97 added subpar. (C).

2004—Subsec. (a)(4). Pub. L. 108–458, § 5401(a), added par. (4).

Subsec. (e). Pub. L. 108–458, § 5401(b), added subsec. (e).

2000—Subsec. (b). Pub. L. 106–185 inserted heading and amended text of subsec. (b) generally, substituting present provisions for provisions relating to conveyances subject to seizure and forfeiture, exceptions, officers and authorized persons, disposition of forfeited conveyances, and suits and actions.

1996—Subsec. (a)(1). Pub. L. 104–208, § 671(a)(1), made technical amendment to directory language of Pub. L. 103–322, § 60024(1)(F). See 1994 Amendment note below.

Subsec. (a)(1)(A)(v). Pub. L. 104–208, § 203(b)(1), which directed the amendment of subsec. (a)(1)(A) by adding cl. (v) at end, was executed by adding cl. (v) after cl. (iv), to reflect the probable intent of Congress.

Subsec. (a)(1)(B)(i). Pub. L. 104–208, § 203(a), (b)(2)(A), inserted ''or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain'' after ''subparagraph (A)(i)''.

Subsec. (a)(1)(B)(ii). Pub. L. 104–208, § 203(b)(2)(B), substituted ''(iv), or (v)(II)'' for ''or (iv)''.

Subsec. (a)(1)(B)(iii), (iv). Pub. L. 104–208, § 203(b)(2)(C), (D), substituted ''(iv), or (v)'' for ''or (iv)''.

Subsec. (a)(2). Pub. L. 104–208, § 203(d), substituted ''for each alien in respect to whom a violation of this paragraph occurs'' for ''for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 104–208, § 203(b)(3), in concluding provisions, substituted ''be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.'' for ''be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both..''

Subsec. (a)(2)(B)(i). Pub. L. 104–208, § 203(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''a second or subsequent offense,''.

Subsec. (a)(3). Pub. L. 104–208, § 203(b)(4), added par. (3).

Subsec. (d). Pub. L. 104–208, § 219, added subsec. (d).

1994—Subsec. (a)(1). Pub. L. 103–322, § 60024(1)(F), as amended by Pub. L. 104–208, § 671(a)(1), substituted ''shall be punished as provided in subparagraph (B)'' for ''shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs'' in concluding provisions.

Pub. L. 103–322, § 60024(1)(A)–(E), (G), designated existing provisions of par. (1) as subpar. (A) of par. (1), redesignated subpars. (A) to (D) of former par. (1) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 103–322, § 60024(2), in concluding provisions, substituted ''or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both.'' for ''or imprisoned not more than five years, or both''.

1988—Subsec. (a)(1). Pub. L. 100–525, § 2(d)(1), in closing provisions substituted ''or imprisoned'' for ''imprisoned'' and ''this paragraph'' for ''this subsection''.

Subsec. (b)(4)(C), (5). Pub. L. 100–525, § 2(d)(2), amended Pub. L. 99–603, § 112(b)(5), (8). See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–603, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

''(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

''(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

''(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

''(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.''

Subsec. (b)(1). Pub. L. 99–603, § 112(b)(1), (2), substituted ''has been or is being used'' for ''is used'' and ''seized and subject to'' for ''subject to seizure and'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99–603, § 112(b)(3), inserted ''or is being'' after ''has been''.

Subsec. (b)(3). Pub. L. 99–603, § 112(b)(4), substituted ''property'' for ''conveyances''.

Subsec. (b)(4)(C). Pub. L. 99–603, § 112(b)(5), as amended by Pub. L. 100–525, § 2(d)(2)(A), inserted '', or the Maritime Administration if appropriate under section 484(i) of title 40,''.

Subsec. (b)(4)(D). Pub. L. 99–603, § 112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99–603, § 112(b)(7)–(9), as amended by Pub. L. 100–525, § 2(d)(2)(B), substituted '', except that'' for '': *Provided*, That'' in provisions preceding subpar. (A), substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not lawfully entitled to enter, or reside within, the United States'' wherever appearing, inserted ''or of the Department of State'' in subpar. (B), and substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not entitled to enter, or reside within, the United States'' in subpar. (C).

1981—Subsec. (b). Pub. L. 97–116 strengthened the seizure and forfeiture authority by striking out the ''innocent owner'' exemption and merely requiring the Government to show probable cause that the conveyance seized has been used to illegally transport aliens, which when demonstrated, shifts the burden of proof to the owner or claimant to show by a preponderance of the evidence that the conveyance was not illegally used, by relieving the Government of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided probable cause for the original seizure was demonstrated, and by striking out the requirement that the Government satisfy any valid lien or third party interest in the conveyance without expense to the interest holder by providing the lienholders interest be satisfied only after costs associated with the seizure have been deducted.

1978—Subsecs. (b), (c). Pub. L. 95–582 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–185, § 21, Apr. 25, 2000, 114 Stat. 225, provided that: ''Except as provided in section 14(c) [set out as an Effective Date note under section 2466 of title 28, Judiciary and Judicial Procedure], this Act [see Short Title of 2000 Amendment note set out under section 981 of Title 18, Crimes and Criminal Procedure] and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment of this Act [Apr. 25, 2000].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 203(f) of div. C of Pub. L. 104–208 provided that: ''This section [amending this section and enacting provisions set out as a note under section 994 of

Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 671(a)(1) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, 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.

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.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b) of this section.

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) of this section with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3) of this section) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) of this section with respect to the individual's referral.

(6) Treatment of documentation for certain employees

(A) In general

For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) of this section with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5) of this section.

(B) Period

The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability

(i) In general

If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) of this section and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the

employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption

The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception

Clause (i) shall not apply in any prosecution under subsection (f)(1) of this section.

(7) Application to Federal Government

For purposes of this section, the term ''entity'' includes an entity in any branch of the Federal Government.

(b) Employment verification system

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) of this section are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation

(A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual's—

(i) United States passport;[1]

(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) Authority to prohibit use of certain documents

If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or an electronic signature.

[1] So in original. Probably should be followed by ''or''.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) Copying of documentation permitted

Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18.

(6) Good faith compliance

(A) In general

Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) Exception if failure to correct after notice

Subparagraph (A) shall not apply if—

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators

Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section.

(c) No authorization of national identification cards

Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and changes in employment verification system

(1) Presidential monitoring and improvements in system

(A) Monitoring

The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) of this section provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system

To the extent that the system established under subsection (b) of this section is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) of this section as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system

Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity

The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents

If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system

Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one's person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report

In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes

(i) Hearings and review

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 any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action

No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined

As used in this paragraph, the term ''major change'' means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act [42 U.S.C. 301 et seq.], including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) of this section are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b) of this section. No such project may extend over a period of longer than five years.

(B) Reports on projects

The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential

violations of subsection (a) or (g)(1) of this section,

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) of this section as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) of this section under this subsection.

(2) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing

(A) In general

Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2) of this section, the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) of this section (or subsection (d) of this section if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds

With respect to a violation of subsection (g)(1) of this section, the order under this subsection may provide for the remedy described in subsection (g)(2) of this section.

(7) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review

A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders

If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal penalties and injunctions for pattern or practice violations

(1) Criminal penalty

Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations

Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a) of this section, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of indemnity bonds

(1) Prohibition

It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e) of this section, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous provisions

(1) Documentation

In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien

As used in this section, the term ''unauthorized alien'' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 8, §274A, as added Pub. L. 99–603, title I, §101(a)(1), Nov. 6, 1986, 100 Stat. 3360; amended Pub. L. 100–525, §2(a)(1), Oct. 24, 1988, 102 Stat. 2609; Pub. L. 101–649, title V, §§521(a), 538(a), Nov. 29, 1990, 104 Stat. 5053, 5056; Pub. L. 102–232, title III, §§306(b)(2), 309(b)(11), Dec. 12, 1991, 105 Stat. 1752, 1759; Pub. L. 103–416, title II, §§213, 219(z)(4), Oct. 25, 1994, 108 Stat. 4314, 4318; Pub. L. 104–208, div. C, title III, §379(a), title IV, §§411(a), 412(a)–(d), 416, Sept. 30, 1996, 110 Stat. 3009–649, 3009–666 to 3009–669; Pub. L. 108–390, §1(a), Oct. 30, 2004, 118 Stat. 2242.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(D)(iii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) 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

2004—Subsec. (b)(1)(A). Pub. L. 108–390, §1(a)(1), inserted ''Such attestation may be manifested by either

a hand-written or an electronic signature.'' before ''A person or entity has complied'' in concluding provisions.

Subsec. (b)(2). Pub. L. 108–390, § 1(a)(2), inserted at end ''Such attestation may be manifested by either a hand-written or an electronic signature.''

Subsec. (b)(3). Pub. L. 108–390, § 1(a)(3), inserted ''a paper, microfiche, microfilm, or electronic version of'' after ''must retain'' in introductory provisions.

1996—Subsec. (a)(6). Pub. L. 104–208, § 412(b), added par. (6).

Subsec. (a)(7). Pub. L. 104–208, § 412(d), added par. (7).

Subsec. (b)(1)(B). Pub. L. 104–208, § 412(a)(1)(A), (B), redesignated cl. (v) as (ii), substituted '', alien registration card, or other document designated by the Attorney General, if the document'' for ''or other alien registration card, if the card'' in introductory provisions of that cl., and struck out former cls. (ii) to (iv) which read as follows:

''(ii) certificate of United States citizenship;

''(iii) certificate of naturalization;

''(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or''.

Subsec. (b)(1)(B)(ii). Pub. L. 104–208, § 412(a)(1)(C), in subcl. (I), substituted ''and'' for ''or'' before ''such other personal'' and struck out ''and'' at end, in subcl. (II), substituted '', and'' for the period at end, and added subcl. (III).

Subsec. (b)(1)(C). Pub. L. 104–208, § 412(a)(2), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or''.

Subsec. (b)(1)(E). Pub. L. 104–208, § 412(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 104–208, § 411(a), added par. (6).

Subsec. (e)(2)(C). Pub. L. 104–208, § 416, added subpar. (C).

Subsec. (e)(7). Pub. L. 104–208, § 379(a)(2), substituted ''the final agency decision and order under this subsection'' for ''a final order under this subsection''.

Pub. L. 104–208, § 379(a)(1), substituted ''unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations'' for ''unless, within 30 days, the Attorney General modifies or vacates the decision and order''.

Subsecs. (i) to (n). Pub. L. 104–208, § 412(c), struck out subsec. (i) which provided effective dates for implementation of this section, subsec. (j) which required General Accounting Office reports on implementation of this section, subsec. (k) which established a taskforce to review reports, subsec. (*l*) which provided a termination date for employer sanctions under this section upon finding of widespread discrimination in implementing this section, and subsecs. (m) and (n) which provided for expedited procedures in House of Representatives and Senate for considering resolutions to approve findings in the reports.

1994—Subsec. (b)(3). Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 102–232, § 306(b)(2). See 1991 Amendment note below.

Subsec. (d)(4)(A). Pub. L. 103–416, § 213, substituted ''five'' for ''three'' in second sentence.

1991—Subsec. (b)(1)(D)(ii). Pub. L. 102–232, § 309(b)(11), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (b)(3). Pub. L. 102–232, § 306(b)(2), as amended by Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 101–649, § 538(a). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, § 521(a), struck out ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''or other entity'' in introductory provisions, inserted ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(A)'' in subpar. (A), and inserted ''(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(B)'' in subpar. (B).

Subsec. (b)(3). Pub. L. 101–649, § 538(a), as amended by Pub. L. 102–232, § 306(b)(2), as amended by Pub. L. 103–416, § 219(z)(4), inserted '', the Special Counsel for Immigration-Related Unfair Employment Practices,'' after ''officers of the Service''.

1988—Subsec. (b)(1)(A). Pub. L. 100–525, § 2(a)(1)(A), substituted ''the first sentence of this paragraph'' for ''such sentence'' and ''such another document'' for ''such a document''.

Subsec. (d)(3)(D). Pub. L. 100–525, § 2(a)(1)(B), in heading substituted ''defined'' for ''requiring two years notice and congressional review''.

Subsec. (e)(1). Pub. L. 100–525, § 2(a)(1)(C)(i), inserted reference to subsec. (g)(1) in three places.

Subsec. (e)(3). Pub. L. 100–525, § 2(a)(1)(C)(i), (ii), inserted reference to subsec. (g)(1) in two places and reference to par. (6) in two places.

Subsec. (e)(4)(A)(ii), (iii). Pub. L. 100–525, § 2(a)(1)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (e)(6) to (9). Pub. L. 100–525, § 2(a)(1)(C)(iii), (iv), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (g)(2). Pub. L. 100–525, § 2(a)(1)(E), inserted reference to subsec. (e) of this section.

Subsec. (i)(3)(B)(iii). Pub. L. 100–525, § 2(a)(1)(F), substituted ''an order'' for ''a order'' and ''subsection (a)(1)(A) of this section'' for ''paragraph (1)(A)''.

Subsec. (j)(1). Pub. L. 100–525, § 2(a)(1)(G), made technical amendment to provision of original act which was translated as ''November 6, 1986,'' and struck out ''of the United States'' after ''Comptroller General''.

Subsec. (j)(2). Pub. L. 100–525, § 2(a)(1)(H), substituted ''this section'' for ''that section''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–390, § 1(b), Oct. 30, 2004, 118 Stat. 2242, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the earlier of—

''(1) the date on which final regulations implementing such amendments take effect; or

''(2) 180 days after the date of the enactment of this Act [Oct. 30, 2004].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 379(b) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section and section 1324c of this title] shall apply to orders issued on or after the date of the enactment of this Act [Sept. 30, 1996].''

Section 411(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act [Sept. 30, 1996].''

Section 412(e) of div. C of Pub. L. 104–208, as amended by Pub. L. 105–54, § 3(a), Oct. 6, 1997, 111 Stat. 1175; Pub. L. 108–156, § 3(d), Dec. 3, 2003, 117 Stat. 1945, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996]) as the Secretary of Homeland Security shall designate.

''(2) The amendment made by subsection (b) [amending this section] shall apply to individuals hired on or after 60 days after the date of the enactment of this Act.

''(3) The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act.

''(4) The amendment made by subsection (d) [amending this section] applies to hiring occurring before, on, or after the date of the enactment of this Act, but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act [subsecs. (e) and (f) of this section] for such hiring occurring before such date.''

[Section 3(b) of Pub. L. 105–54 provided that: ''The amendment made by subsection (a) [amending section 412(e) of div. C of Pub. L. 104–208, set out above] shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [div. C of Pub. L. 104–208].'']

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(4) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(b)(2) 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

Section 521(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to recruiting and referring occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 538(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

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.

DATE OF ENACTMENT OF THIS SECTION FOR ALIENS EMPLOYED UNDER SECTION 8704 OF TITLE 46, SHIPPING

Date of enactment of this section with respect to aliens deemed employed under section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see section 5(f)(3) of Pub. L. 100–239, set out as a Construction note under section 8704 of Title 46.

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 AUTHORITY

Memorandum of President of the United States, Feb. 10, 1992, 57 F.R. 24345, provided:

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the ''Act'') (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [8 U.S.C. 1101 et seq.], I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the Federal Register the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

Authority of President under subsec. (d)(4) of this section to undertake demonstration projects of different changes in requirements of employment verification system delegated to Attorney General by section 2 of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

PILOT PROGRAMS FOR EMPLOYMENT ELIGIBILITY CONFIRMATION

Pub. L. 104–208, div. C, title IV, subtitle A, Sept. 30, 1996, 110 Stat. 3009–655, as amended by Pub. L. 107–128, §2, Jan. 16, 2002, 115 Stat. 2407; Pub. L. 108–156, §§2, 3, Dec. 3, 2003, 117 Stat. 1944, provided that:

''SEC. 401. ESTABLISHMENT OF PROGRAMS.

''(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

''(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act [Sept. 30, 1996]. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program at the end of the 11-year period beginning on the first day the pilot program is in effect.

''(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation—

''(1) of the basic pilot program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

''(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

''(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

''(d) REFERENCES IN SUBTITLE.—In this subtitle—

''(1) PILOT PROGRAM REFERENCES.—The terms 'program' or 'pilot program' refer to any of the 3 pilot programs provided for under this subtitle.

''(2) CONFIRMATION SYSTEM.—The term 'confirmation system' means the confirmation system established under section 404 of this division.

''(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such

section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act [8 U.S.C. 1324a].

''(4) I–9 OR SIMILAR FORM.—The term 'I–9 or similar form' means the form used for purposes of section 274A(b)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

''(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

''(6) UNITED STATES CITIZENSHIP.—The term 'United States citizenship' includes United States nationality.

''(7) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(36)].

''SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

''(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

''(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

''(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

''(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

''(c) GENERAL TERMS OF ELECTIONS.—

''(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Secretary of Homeland Security shall specify. The Secretary of Homeland Security may not impose any fee as a condition of making an election or participating in a pilot program.

''(2) SCOPE OF ELECTION.—

''(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)—

''(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or

''(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

''(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

''(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

''(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

''(1) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

''(2) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

''(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

''(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

''(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

''(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

''(1) FEDERAL GOVERNMENT.—

''(A) EXECUTIVE DEPARTMENTS.—

''(i) IN GENERAL.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

''(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

''(I) shall elect the pilot program (or programs) in which the Department shall participate, and

''(II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

''(iii) ROLE OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall assist and coordinate elections under this subparagraph in such manner as assures that—

''(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

''(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

''(B) LEGISLATIVE BRANCH.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

''(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4) or section 274B(g) of the Immigration and Nationality Act [8 U.S.C. 1324a(e)(4), 1324b(g)] may require the subject of the order to participate in, and comply with the terms of, a pilot pro-

gram with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

''(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual—

''(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

''(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

''(f) CONSTRUCTION.—This subtitle shall not affect the authority of the Secretary of Homeland Security under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

''SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

''(a) BASIC PILOT PROGRAM.—A person or other entity that elects to participate in the basic pilot program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

''(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I–9 or similar form—

''(A) the individual's social security account number, if the individual has been issued such a number, and

''(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I–9 forms under section 274A(b)(3).

''(2) PRESENTATION OF DOCUMENTATION.—

''(A) IN GENERAL.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

''(i) A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) must be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.

''(ii) A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

''(iii) The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

''(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

''(i) the person with the identity claimed by the individual is authorized to work in the United States, and

''(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

''(3) SEEKING CONFIRMATION.—

''(A) IN GENERAL.—The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

''(B) EXTENSION OF TIME PERIOD.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

''(4) CONFIRMATION OR NONCONFIRMATION.—

''(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I–9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

''(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

''(i) NONCONFIRMATION.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

''(ii) NO CONTEST.—If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I–9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

''(iii) CONTEST.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

''(iv) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I–9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

''(C) CONSEQUENCES OF NONCONFIRMATION.—

''(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

''(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

''(iii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

''(b) CITIZEN ATTESTATION PILOT PROGRAM.—

''(1) IN GENERAL.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

''(2) RESTRICTIONS.—

''(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

''(i) contains a photograph of the individual involved, and

''(ii) has been determined by the Secretary of Homeland Security to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

''(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

''(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I–9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

''(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

''(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3).

''(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

''(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

''(B) RESTRICTION.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

''(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

''(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the basic pilot program under subsection (a).

''(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

''(3) USE OF MACHINE-READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

''(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

''SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

''(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security (or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity)—

''(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

''(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

''(b) INITIAL RESPONSE.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

''(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary of Homeland Security shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

''(d) DESIGN AND OPERATION OF SYSTEM.—The confirmation system shall be designed and operated—

''(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

''(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

''(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

''(4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

''(A) the selective or unauthorized use of the system to verify eligibility;

''(B) the use of the system prior to an offer of employment; or

''(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

''(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

''(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

''(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

''(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under a pilot program.

''(2) NO NATIONAL IDENTIFICATION CARD.—Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

''SEC. 405. REPORTS.

''(a) IN GENERAL.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

''(1) assess the degree of fraudulent attesting of United States citizenship,

''(2) include recommendations on whether or not the pilot programs should be continued or modified, and

''(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

''(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

''(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

''(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the basic pilot program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).''

[Pub. L. 107–128, § 3, Jan. 16, 2002, 115 Stat. 2407, provided that: ''The amendment made by this Act [amending section 401(b) of Pub. L. 104–208, set out above] shall take effect on the date of the enactment of this Act [Jan. 16, 2002].'']

REPORT ON ADDITIONAL AUTHORITY OR RESOURCES NEEDED FOR ENFORCEMENT OF EMPLOYER SANCTIONS PROVISIONS

Pub. L. 104–208, div. C, title IV, § 413(a), Sept. 30, 1996, 110 Stat. 3009–668, as amended by Pub. L. 108–156, § 3(d), Dec. 3, 2003, 117 Stat. 1945, provided that not later than 1 year after Sept. 30, 1996, the Secretary of Homeland Security was to submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed by the Immigration and Naturalization Service in order to enforce section 1324a of this title, or by Federal agencies in order to carry out Ex. Ord. No. 12989, set out below, and to expand the restrictions in such order to cover agricultural subsidies, grants, job train-

ing programs, and other Federally subsidized assistance programs.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–238, § 5, Dec. 18, 1989, 103 Stat. 2104, provided that:

''(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

''(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(b)(1)].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

''(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.''

INTERIM REGULATIONS

Section 101(a)(2) of Pub. L. 99–603 provided that: ''The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section [enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 405 of Title 42, The Public Health and Welfare].''

GRANDFATHER PROVISION FOR CURRENT EMPLOYEES

Section 101(a)(3) of Pub. L. 99–603 provided that:

''(A) Section 274A(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(a)(1)] shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].

''(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.''

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Section 101(d) of Pub. L. 99–603 provided that:

''(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

''(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

''(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974 [5 U.S.C. 552a, 552a note].

''(4) Such study shall be conducted within twelve months of the date of enactment of this Act [Nov. 6, 1986].

''(5) The Attorney General shall prepare and transmit to the Congress a report—

''(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

''(B) not later than twelve months after such date, setting forth the findings of such study.''

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

Section 101(e) of Pub. L. 99–603 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a], and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate.''

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Section 402 of Pub. L. 99–603 provided that: ''The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a] (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include—

''(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

''(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

''(3) an analysis of the impact of the enforcement of that section on—

''(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

''(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

''(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.''

[Functions of President under section 402 of Pub. L. 99–603 delegated to Secretary of Homeland Security, except functions in section 402(3)(A) which were delegated to Secretary of Labor, by sections 1(b) and 2(a) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended, set out as a note under section 1364 of this title.]

EX. ORD. NO. 12989. ECONOMY AND EFFICIENCY IN GOVERNMENT PROCUREMENT THROUGH COMPLIANCE WITH CERTAIN IMMIGRATION AND NATIONALITY ACT PROVISIONS

Ex. Ord. No. 12989, Feb. 13, 1996, 61 F.R. 6091, as amended by Ex. Ord. No. 13286, §19, Feb. 28, 2003, 68 F.R. 10623, provided:

This order is designed to promote economy and efficiency in Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose work force is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose work force is more stable. It remains the policy of this Administration to enforce the immigration laws to the fullest extent, including the detection and deportation of illegal aliens. In these circumstances, contractors cannot rely on the continuing availability and service of illegal aliens, and contractors that choose to employ unauthorized aliens inevitably will have a less stable and less dependable work force than contractors that do not employ such persons. Because of this Administration's vigorous enforcement policy, contractors that employ unauthorized alien workers are necessarily less stable and dependable procurement sources than contractors that do not hire such persons. I find, therefore, that adherence to the general policy of not contracting with providers that knowingly employ unauthorized alien workers will promote economy and efficiency in Federal procurement.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) [now 40 U.S.C. 121(a)] and 3 U.S.C. 301, it is hereby ordered as follows:

SECTION 1. (a) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies should not contract with employers that have not complied with section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the ''INA employment provisions'') prohibiting the unlawful employment of aliens. All discretion under this Executive order shall be exercised consistent with this policy.

(b) It remains the policy of this Administration to fully and aggressively enforce the antidiscrimination provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] to the fullest extent. Nothing in this order relieves employers from their obligation to avoid unfair immigration-related employment practices as required by the antidiscrimination provisions of section 1324(b) [274B] of the INA (8 U.S.C. 1324b) and all other antidiscrimination requirements of applicable law, including the requirements of 8 U.S.C. 1324b(a)(6) concerning the treatment of certain documentary practices as unfair immigration-related employment practices.

SEC. 2. Contractor, as used in this Executive order, shall have the same meaning as defined in subpart 9.4 of the Federal Acquisition Regulation.

SEC. 3. Using the procedures established pursuant to 8 U.S.C. 1324a(e): (a) the Secretary of Homeland Security may investigate to determine whether a contractor or an organizational unit thereof is not in compliance with the INA employment provisions;

(b) the Secretary of Homeland Security shall receive and may investigate complaints by employees of any entity covered under section 3(a) of this order where such complaints allege noncompliance with the INA employment provisions; and

(c) the Attorney General shall hold such hearings as are required under 8 U.S.C. 1324a(e) to determine whether an entity covered under section 3(a) is not in compliance with the INA employment provisions.

SEC. 4. (a) Whenever the Secretary of Homeland Security or the Attorney General determines that a contractor or an organizational unit thereof is not in compliance with the INA employment provisions, the Secretary of Homeland Security or the Attorney General shall transmit that determination to the appropriate contracting agency and such other Federal agencies as the Secretary of Homeland Security or the Attorney General may determine. Upon receipt of such determination from the Secretary of Homeland Security or the Attorney General, the head of the appropriate contracting agency shall consider the contractor or an organizational unit thereof for debarment as well as for such other action as may be appropriate in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on the determination of the Secretary of Homeland Security or the Attorney General that it is not in compliance with the INA employment provisions. Such determination shall not be reviewable in the debarment proceedings.

(c) The scope of the debarment generally should be limited to those organizational units of a Federal contractor that the Secretary of Homeland Security or the Attorney General finds are not in compliance with the INA employment provisions.

(d) The period of the debarment shall be for 1 year and may be extended for additional periods of 1 year if, using the procedures established pursuant to 8 U.S.C. 1324a(e), the Secretary of Homeland Security or the Attorney General determines that the organizational unit of the Federal contractor continues to be in violation of the INA employment provisions.

(e) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

SEC. 5. (a) The Secretary of Homeland Security and Attorney General shall be responsible for the administration and enforcement of this order, except for the debarment procedures. The Secretary of Homeland Security and Attorney General may adopt such additional rules and regulations and issue such orders as may be deemed necessary and appropriate to carry out their respective responsibilities under this order. If the Secretary of Homeland Security or the Attorney General proposes to issue rules, regulations, or orders that affect the contracting departments and agencies, the Secretary of Homeland Security or the Attorney General shall consult with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and such other agencies as may be appropriate.

(b) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility and other related responsibilities assigned to heads of contracting departments and agencies under this order.

SEC. 6. Each contracting department and agency shall cooperate with and provide such information and assistance to the Secretary of Homeland Security and the Attorney General as may be required in the performance of their respective functions under this order.

SEC. 7. The Secretary of Homeland Security, the Attorney General, the Secretary of Defense, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and the heads of contracting departments and agencies may delegate any of their functions or duties under this order to any officer or employee of their respective agencies.

SEC. 8. This order shall be implemented in a manner intended to least burden the procurement process. This

order neither authorizes nor requires any additional certification provision, clause, or requirement to be included in any contract or contract solicitation.

SEC. 9. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

§ 1324b. Unfair immigration-related employment practices

(a) Prohibition of discrimination based on national origin or citizenship status

(1) General rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–2], or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) "Protected individual" defined

As used in paragraph (1), the term ''protected individual'' means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a) or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens

Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) Prohibition of intimidation or retaliation

It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g) of this section, to have been discriminated against.

(6) Treatment of certain documentary practices as employment practices

A person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

(b) Charges of violations

(1) In general

Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c) of this section). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) of this section if

a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel

(1) Appointment

The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the ''Special Counsel'') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties

The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1) of this section.

(3) Compensation

The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5.

(4) Regional offices

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of charges

(1) By Special Counsel

The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) Private actions

If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice. The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) Time limitations on complaints

No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1) of this section.

(e) Hearings

(1) Notice

Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases

Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party

Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) Testimony and authority of hearing officers

(1) Testimony

The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges

In conducting investigations and hearings under this subsection[1] and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) Determinations

(1) Order

The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i) of this section.

(2) Orders finding violations

(A) In general

If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order

Such an order also may require the person or entity—

(i) to comply with the requirements of section 1324a(b) of this title with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 1324a(b)(5) of this title, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay;

(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against,

(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against,

(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against, and

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6) of this section, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against;

(v) to post notices to employees about their rights under this section and employers' obligations under section 1324a of this title;

(vi) to educate all personnel involved in hiring and complying with this section or section 1324a of this title about the requirements of this section or such section;

(vii) to remove (in an appropriate case) a false performance review or false warning from an employee's personnel file; and

(viii) to lift (in an appropriate case) any restrictions on an employee's assignments, work shifts, or movements.

(C) Limitation on back pay remedy

In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations

If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged and is not engaging in any such unfair immigration-related employment prac-

[1] So in original. Probably should be ''section''.

tice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of attorney's fees

In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of final orders

(1) In general

Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(j) Court enforcement of administrative orders

(1) In general

If an order of the agency is not appealed under subsection (i)(1) of this section, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order

Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review

If, upon appeal of an order under subsection (i)(1) of this section, the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorneys' fees

In any judicial proceeding under subsection (i) of this section or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination dates

(1) This section shall not apply to discrimination in hiring, recruiting, or referring, or discharging of individuals occurring after the date of any termination of the provisions of section 1324a of this title, under subsection (*l*)[2] of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 1324a(j)[2] of this title if—

(A) the Comptroller General determines, and so reports in such report that—

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 1324a of this title, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n)[2] of section 1324a of this title shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (*l*)[2] of such section.

(*l*) Dissemination of information concerning anti-discrimination provisions

(1) Not later than 3 months after November 29, 1990, the Special Counsel, in cooperation with the chairman of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

(2) In order to carry out the campaign under this subsection, the Special Counsel—

(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

(3) There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year (beginning with fiscal year 1991).

(June 27, 1952, ch. 477, title II, ch. 8, § 274B, as added Pub. L. 99–603, title I, § 102(a), Nov. 6, 1986, 100 Stat. 3374; amended Pub. L. 100–525, § 2(b), Oct. 24, 1988, 102 Stat. 2610; Pub. L. 101–649, title V, §§ 531, 532(a), 533(a), 534(a), 535(a), 536(a), 537(a), 539(a), Nov. 29, 1990, 104 Stat. 5054–5056; Pub. L.

[2] See References in Text note below.

102–232, title III, § 306(b)(1), (3), (c)(1), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 103–416, title II, § 219(q), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title IV, § 421(a), title VI, § 671(d)(1)(B), Sept. 30, 1996, 110 Stat. 3009–670, 3009–723.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (b)(2) and (*l*)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VII of the Civil Rights Act of 1964 is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Subsections (j), (*l*), (m), and (n) of section 1324a of this title, referred to in subsec. (k), were repealed by Pub. L. 104–208, div. C, title IV, § 412(c), Sept. 30, 1996, 110 Stat. 3009–668.

AMENDMENTS

1996—Subsec. (a)(3)(B). Pub. L. 104–208, § 671(d)(1)(B), struck out ‘‘, 1161(a),’’ after ‘‘section 1160(a)’’.

Subsec. (a)(6). Pub. L. 104–208, § 421(a), substituted ‘‘A person's’’ for ‘‘For purposes of paragraph (1), a person's’’ and ‘‘if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)’’ for ‘‘relating to the hiring of individuals’’.

1994—Subsec. (g)(2)(C). Pub. L. 103–416 substituted ‘‘the Special Counsel’’ for ‘‘an administrative law judge’’ in first sentence.

1991—Subsec. (g)(2)(B)(iv)(II). Pub. L. 102–232, § 306(b)(1), substituted ‘‘subclauses (III) and (IV)’’ for ‘‘subclause (IV)’’.

Subsec. (g)(2)(B)(iv)(IV). Pub. L. 102–232, § 306(b)(3)(A), substituted a semicolon for period at end.

Subsec. (g)(2)(B)(v), (vi). Pub. L. 102–232, § 306(b)(3)(B), substituted semicolons for commas at end.

Subsec. (g)(2)(B)(vii). Pub. L. 102–232, § 306(b)(3)(C), (D), substituted a semicolon for comma at end and ‘‘to remove (in an appropriate case)’’ for ‘‘to order (in an appropriate case) the removal of’’.

Subsec. (g)(2)(B)(viii). Pub. L. 102–232, § 306(b)(3)(E), substituted ‘‘to lift (in an appropriate case)’’ for ‘‘to order (in an appropriate case) the lifting of’’.

Subsec. (g)(2)(D). Pub. L. 102–232, § 306(c)(1), substituted ‘‘physically’’ for ‘‘physicially’’.

1990—Subsec. (a)(1)(B). Pub. L. 101–649, § 533(a)(1), substituted ‘‘protected individual’’ for ‘‘citizen or intending citizen’’.

Subsec. (a)(3). Pub. L. 101–649, § 533(a)(2), (3), in heading and text substituted ‘‘protected individual’’ for ‘‘citizen or intending citizen’’.

Subsec. (a)(3)(B). Pub. L. 101–649, § 533(a)(4), substituted ‘‘is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not’’ for ‘‘is an alien who—

‘‘(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title, and

‘‘(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not’’, and in closing provisions substituted ‘‘(i)’’ and ‘‘(ii)’’ for ‘‘(I)’’ and ‘‘(II)’’, respectively.

Pub. L. 101–649, § 532(a), inserted reference to sections 1160(a) and 1161(a) of this title in cl. (i).

Subsec. (a)(5). Pub. L. 101–649, § 534(a), added par. (5).

Subsec. (a)(6). Pub. L. 101–649, § 535(a), added par. (6).

Subsec. (d)(2). Pub. L. 101–649, § 537(a), inserted ‘‘the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and’’ after ‘‘120-day period,’’, inserted ‘‘within 90 days after the date of receipt of the notice’’ before period at end, and inserted at end ‘‘The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.’’

Subsec. (g)(2)(B)(iii). Pub. L. 101–649, § 539(a)(1), struck out ‘‘and’’ at end.

Subsec. (g)(2)(B)(iv). Pub. L. 101–649, § 539(a)(2), which directed the substitution of a comma for the period at end of cl. (iv)(II), could not be executed because of the general amendment of cl. (iv) by Pub. L. 101–649, § 536(a), see below.

Pub. L. 101–649, § 536(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows:

‘‘(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

‘‘(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.’’

Subsec. (g)(2)(B)(v) to (viii). Pub. L. 101–649, § 539(a)(3), added cls. (v) to (viii).

Subsec. (*l*). Pub. L. 101–649, § 531, added subsec. (*l*).

1988—Subsec. (a)(1). Pub. L. 100–525, § 2(b)(1), inserted reference to section 1324a(h)(3) of this title.

Subsec. (e)(3). Pub. L. 100–525, § 2(b)(2), struck out ‘‘said’’ before ‘‘proceeding’’.

Subsec. (g)(2)(A). Pub. L. 100–525, § 2(b)(3), substituted ‘‘that’’ for ‘‘that that’’.

Subsec. (g)(2)(B)(ii). Pub. L. 100–525, § 2(b)(4), substituted ‘‘1324a’’ for ‘‘1324’’.

Subsec. (g)(3). Pub. L. 100–525, § 2(b)(5), substituted ‘‘engaged and’’ for ‘‘engaged or’’.

Subsec. (h). Pub. L. 100–525, § 2(b)(6), substituted ‘‘attorney's’’ for ‘‘attorneys' ’’ in heading.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 421(b) of div. C of Pub. L. 104–208 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Sept. 30, 1996].’’

EFFECTIVE DATE OF 1994 AMENDMENT

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.

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

Section 532(b) of Pub. L. 101–649 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].’’

Section 533(b) of Pub. L. 101–649 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to unfair immigration-related employment practices occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1990].’’

Section 534(b) of Pub. L. 101–649 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].’’

Section 535(b) of Pub. L. 101–649 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990], but shall apply to actions occurring on or after such date.’’

Section 536(b) of Pub. L. 101–649 provided that: ‘‘The amendments made by this section [amending this sec-

tion] shall apply to unfair immigration-related employment practices occurring after the date of the enactment of this Act [Nov. 29, 1990].''

Section 537(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to charges received on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 539(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to orders with respect to unfair immigration-related employment practices occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

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.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

NO EFFECT ON EEOC AUTHORITY

Section 102(b) of Pub. L. 99–603 provided that: ''Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), or any other authority provided therein.''

§ 1324c. Penalties for document fraud

(a) Activities prohibited

It is unlawful for any person or entity knowingly—

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter or to obtain a benefit under this chapter,

(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter or to obtain a benefit under this chapter,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter or obtaining a benefit under this chapter,

(4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title or obtaining a benefit under this chapter, or

(5) to prepare, file, or assist another in preparing or filing, any application for benefits under this chapter, or any document required under this chapter, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted, or

(6)(A) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and (B) to fail to present such document to an immigration officer upon arrival at a United States port of entry.

(b) Exception

This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of title 18.

(c) Construction

Nothing in this section shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18.

(d) Enforcement

(1) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(2) Hearing

(A) In general

Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has violated subsection (a) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

(3) Cease and desist order with civil money penalty

With respect to a violation of subsection (a) of this section, the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(A) not less than $250 and not more than $2,000 for each document that is the subject of a violation under subsection (a) of this section, or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for each document that is the subject of a violation under subsection (a) of this section.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection.

(5) Judicial review

A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(6) Enforcement of orders

If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(7) Waiver by Attorney General

The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly violates subsection (a)(6) of this section if the alien is granted asylum under section 1158 of this title or withholding of removal under section 1231(b)(3) of this title.

(e) Criminal penalties for failure to disclose role as document preparer

(1) Whoever, in any matter within the jurisdiction of the Service, knowingly and willfully fails to disclose, conceals, or covers up the fact that they have, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f) of this section) for immigration benefits, shall be fined in accordance with title 18, imprisoned for not more than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.

(2) Whoever, having been convicted of a violation of paragraph (1), knowingly and willfully prepares or assists in preparing an application for immigration benefits pursuant to this chapter, or the regulations promulgated thereunder, whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Service, shall be fined in accordance with title 18, imprisoned for not more than 15 years, or both, and prohibited from preparing or assisting in preparing any other such application.

(f) Falsely make

For purposes of this section, the term ''falsely make'' means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

(June 27, 1952, ch. 477, title II, ch. 8, § 274C, as added Pub. L. 101–649, title V, § 544(a), Nov. 29, 1990, 104 Stat. 5059; amended Pub. L. 102–232, title III, § 306(c)(5)(A), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 103–416, title II, § 219(r), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title II, §§ 212(a)–(d), 213, 220, title III, §§ 308(g)(10)(D), 379(a), Sept. 30, 1996, 110 Stat. 3009–570, 3009–571, 3009–575, 3009–625, 3009–649.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 212(a)(1), inserted ''or to obtain a benefit under this chapter'' before comma at end.

Subsec. (a)(2). Pub. L. 104–208, § 212(a)(2), inserted ''or to obtain a benefit under this chapter'' before comma at end.

Subsec. (a)(3). Pub. L. 104–208, § 212(a)(3), inserted ''or with respect to'' after ''issued to'' and ''or obtaining a benefit under this chapter'' after ''of this chapter'' and struck out ''or'' at end.

Subsec. (a)(4). Pub. L. 104–208, § 212(a)(4), inserted ''or with respect to'' after ''issued to'' and ''or obtaining a benefit under this chapter'' after ''section 1324a(b) of this title'' and substituted '', or'' for the period at end.

Subsec. (a)(5), (6). Pub. L. 104–208, § 212(a)(5), added pars. (5) and (6).

Subsec. (d)(1)(C). Pub. L. 104–208, § 220, added subpar. (C).

Subsec. (d)(3)(A), (B). Pub. L. 104–208, § 212(c), substituted ''each document that is the subject of a violation under subsection (a) of this section'' for ''each document used, accepted, or created and each instance of use, acceptance, or creation''.

Subsec. (d)(4). Pub. L. 104–208, § 379(a)(2), substituted ''the final agency decision and order under this subsection'' for ''a final order under this subsection''.

Pub. L. 104–208, § 379(a)(1), substituted ''unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations'' for ''unless, within 30 days, the Attorney General modifies or vacates the decision and order''.

Subsec. (d)(7). Pub. L. 104–208, § 308(g)(10)(D), substituted ''withholding of removal under section 1231(b)(3) of this title'' for ''withholding of deportation under section 1253(h) of this title''.

Pub. L. 104–208, § 212(d), added par. (7).

Subsec. (e). Pub. L. 104–208, § 213, added subsec. (e).

Subsec. (f). Pub. L. 104–208, § 212(b), added subsec. (f).

1994—Subsec. (b). Pub. L. 103–416 substituted ''chapter 224 of title 18'' for ''title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)''.

1991—Subsec. (a)(2) to (4). Pub. L. 102–232 inserted ''or to provide'' after ''receive'' in pars. (2) and (4) and ''or to provide or attempt to provide'' after ''attempt to use'' in par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 212(e) of div. C of Pub. L. 104–208 provided that: ''Section 274C(f) of the Immigration and Nationality Act [8 U.S.C. 1324c(f)], as added by subsection (b), applies to the preparation of applications before, on, or after the date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 308(g)(10)(D) 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 379(a) of Pub. L. 104–208 applicable to orders issued on or after Sept. 30, 1996, see section 379(b) of Pub. L. 104–208, set out as a note under section 1324a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

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.

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

Section applicable to persons or entities that have committed violations on or after Nov. 29, 1990, see section 544(d) of Pub. L. 101–649, as amended, set out as an Effective Date of 1990 Amendment note under section 1227 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.

§ 1324d. Civil penalties for failure to depart

(a) In general

Any alien subject to a final order of removal who—

(1) willfully fails or refuses to—

(A) depart from the United States pursuant to the order,

(B) make timely application in good faith for travel or other documents necessary for departure, or

(C) present for removal at the time and place required by the Attorney General; or

(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more than $500 to the Commissioner for each day the alien is in violation of this section.

(b) Construction

Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 1253(a) of this title or any other section of this chapter.

(June 27, 1952, ch. 477, title II, ch. 8, § 274D, as added Pub. L. 104–208, div. C, title III, § 380(a), Sept. 30, 1996, 110 Stat. 3009–650.)

EFFECTIVE DATE

Section 308(c) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions occurring on or after the title III–A effective date (as defined in section 309(a) of this division [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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immi-

gration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of—

(1) at least $50 and not more than $250 for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(c) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(d) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 275, 66 Stat. 229; Pub. L. 99–639, § 2(d), Nov. 10, 1986, 100 Stat. 3542; Pub. L. 101–649, title I, § 121(b)(3), title V, § 543(b)(2), Nov. 29, 1990, 104 Stat. 4994, 5059; Pub. L. 102–232, title III, § 306(c)(3), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104–208, div. C, title I, § 105(a), Sept. 30, 1996, 110 Stat. 3009–556.)

AMENDMENTS

1996—Subsecs. (b) to (d). Pub. L. 104–208 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1991—Subsec. (a). Pub. L. 102–232 substituted ''fined under title 18'' for ''fined not more than $2,000 (or, if greater, the amount provided under title 18)''.

1990—Subsec. (a). Pub. L. 101–649, § 543(b)(2), inserted ''or attempts to enter'' after ''(1) enters'' and ''attempts to enter or'' after ''or (3)'', and substituted ''shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount provided under title 18) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years'' for ''shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000''.

Subsec. (c). Pub. L. 101–649, § 121(b)(3), added subsec. (c).

1986—Pub. L. 99–639 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 105(b) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to illegal entries or attempts to enter occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Sept. 30, 1996].''

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 section 121(b)(3) of 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.

Amendment by section 543(b)(2) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 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.

§ 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b) of this section, any alien who—

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 1225(c) of this title

because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V of this chapter, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.[1] or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term ''removal'' includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2)[2] of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

(June 27, 1952, ch. 477, title II, ch. 8, § 276, 66 Stat. 229; Pub. L. 100–690, title VII, § 7345(a), Nov. 18, 1988, 102 Stat. 4471; Pub. L. 101–649, title V, § 543(b)(3), Nov. 29, 1990, 104 Stat. 5059; Pub. L. 103–322, title XIII, § 130001(b), Sept. 13, 1994, 108 Stat. 2023; Pub. L. 104–132, title IV, §§ 401(c), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; Pub. L. 104–208, div. C, title III, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009–606, 3009–618 to 3009–620, 3009–629.)

REFERENCES IN TEXT

Section 1252 of this title, referred to in subsec. (c), was amended generally by Pub. L. 104–208, div. C, title III, § 306(a)(2), Sept. 30, 1996, 110 Stat. 3009–607, and, as so amended, does not contain a subsec. (h). For provisions similar to those formerly contained in section 1252(h)(2) of this title, see section 1231(a)(4) of this title.

AMENDMENTS

1996—Pub. L. 104–208, § 308(e)(14)(A), amended section catchline.

Subsec. (a)(1). Pub. L. 104–208, § 308(d)(4)(J)(i), substituted ''denied admission, excluded, deported, or removed'' for ''arrested and deported, has been excluded and deported,'' and ''exclusion, deportation, or removal'' for ''exclusion or deportation''.

Pub. L. 104–208, § 324(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''has been arrested and deported or excluded and deported, and thereafter''.

Subsec. (a)(2)(B). Pub. L. 104–208, § 308(d)(4)(J)(ii), substituted ''denied admission and removed'' for ''excluded and deported''.

Subsec. (b). Pub. L. 104–208, § 324(b), inserted ''(or not during)'' after ''during'' in concluding provisions.

Pub. L. 104–208, § 308(e)(1)(K), substituted ''removal'' for ''deportation'' wherever appearing in pars. (1) and (2) and in concluding provisions.

Subsec. (b)(2). Pub. L. 104–208, § 305(b)(1), struck out ''or'' at end.

Subsec. (b)(3). Pub. L. 104–208, § 305(b)(2), inserted ''or'' at end.

Pub. L. 104–132, § 401(c), added par. (3).

Subsec. (b)(4). Pub. L. 104–208, § 305(b)(3), added par. (4).

Subsec. (c). Pub. L. 104–132, § 438(b), added subsec. (c).

Subsec. (d). Pub. L. 104–132, § 441(a), added subsec. (d).

1994—Subsec. (b). Pub. L. 103–322, in par. (1), inserted ''three or more misdemeanors involving drugs, crimes against the person, or both, or'' after ''commission of'' and substituted ''10'' for ''5'', in par. (2), substituted ''20'' for ''15'', and added concluding sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 2 years'' for ''shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000''.

1988—Pub. L. 100–690 designated existing provisions as subsec. (a), substituted ''Subject to subsection (b) of this section, any alien'' for ''Any alien'', and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by sections 305(b) and 308(d)(4)(J), (e)(1)(K), (14)(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.

Section 324(c) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to departures that occurred before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but only with respect to entries (and attempted entries) occurring on or after such date.''

Section 401(f) of Pub. L. 104–132 provided that: ''The amendments made by this section [enacting sections 1531 to 1537 of this title and amending this section and section 1105a of this title] shall take effect on the date of enactment of this Act [Apr. 24, 1996] and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.''

Section 441(b) of Pub. L. 104–132 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to criminal proceedings initiated after the date of enactment of this Act [Apr. 24, 1996].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

[1] So in original. The period probably should be a semicolon.

[2] See References in Text note below.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7345(b) of Pub. L. 100–690 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any alien who enters, attempts to enter, or is found in, the United States on or after the date of the enactment of this Act [Nov. 18, 1988].''

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.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1327. Aiding or assisting certain aliens to enter

Any person who knowingly aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 277, 66 Stat. 229; Pub. L. 100–690, title VII, § 7346(a), (c)(1), Nov. 18, 1988, 102 Stat. 4471; Pub. L. 101–649, title V, § 543(b)(4), title VI, § 603(a)(16), Nov. 29, 1990, 104 Stat. 5059, 5084; Pub. L. 104–208, div. C, title III, § 308(d)(3)(A), Sept. 30, 1996, 110 Stat. 3009–617.)

AMENDMENTS

1996—Pub. L. 104–208 substituted ''inadmissible'' for ''excludable'' in two places.

1990—Pub. L. 101–649, § 603(a)(16), substituted ''1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof)'' for ''1182(a)(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony), (27), (28), or (29)''.

Pub. L. 101–649, § 543(b)(4), substituted ''shall be fined under title 18, or imprisoned not more than 10 years'' for ''shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for not more than five years''.

1988—Pub. L. 100–690 substituted ''certain aliens'' for ''subversive alien'' in section catchline and inserted ''(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony),'' after ''1182(a)''.

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 1990 AMENDMENT

Amendment by section 543(b)(4) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(16) 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 1988 AMENDMENT

Section 7346(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any aid or assistance which occurs on or after the date of the enactment of this Act [Nov. 18, 1988].''

§ 1328. Importation of alien for immoral purpose

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall be fined under title 18, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.

(June 27, 1952, ch. 477, title II, ch. 8, § 278, 66 Stat. 230; Pub. L. 101–649, title V, § 543(b)(5), Nov. 29, 1990, 104 Stat. 5059.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 10 years, or both'' for ''shall, in every such case, be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 and by imprisonment for a term of not more than ten years''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

§ 1329. Jurisdiction of district courts

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued with-

out the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor. Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers.

(June 27, 1952, ch. 477, title II, ch. 8, § 279, 66 Stat. 230; Pub. L. 104–208, div. C, title III, § 381(a), Sept. 30, 1996, 110 Stat. 3009–650.)

AMENDMENTS

1996—Pub. L. 104–208, § 381(a)(2), inserted at end ''Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers.''

Pub. L. 104–208, § 381(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 381(b) of div. C of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to actions filed after the date of the enactment of this Act [Sept. 30, 1996].''

§ 1330. Collection of penalties and expenses

(a) Notwithstanding any other provisions of this subchapter, the withholding or denial of clearance of or a lien upon any vessel or aircraft provided for in section 1221, 1224, 1253(c)(2), 1281, 1283, 1284, 1285, 1286, 1321, 1322, or 1323 of this title shall not be regarded as the sole and exclusive means or remedy for the enforcement of payments of any fine, penalty or expenses imposed or incurred under such sections, but, in the discretion of the Attorney General, the amount thereof may be recovered by civil suit, in the name of the United States, from any person made liable under any of such sections.

(b)(1) There is established in the general fund of the Treasury a separate account which shall be known as the ''Immigration Enforcement Account''. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration Enforcement Account amounts described in paragraph (2) to remain available until expended.

(2) The amounts described in this paragraph are the following:

(A) The increase in penalties collected resulting from the amendments made by sections 203(b) and 543(a) of the Immigration Act of 1990.

(B) Civil penalties collected under sections 1229c(d), 1324c, 1324d, and 1325(b) of this title.

(3)(A) The Secretary of the Treasury shall refund out of the Immigration Enforcement Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General for activities that enhance enforcement of provisions of this subchapter. Such activities include—

(i) the identification, investigation, apprehension, detention, and removal of criminal aliens;

(ii) the maintenance and updating of a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and

(iii) for the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

(C) The amounts required to be refunded from the Immigration Enforcement Account for fiscal year 1996 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of Public Law 104–134.

(D) The Attorney General shall prepare and submit annually to the Congress statements of financial condition of the Immigration Enforcement Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year.

(June 27, 1952, ch. 477, title II, ch. 8, § 280, 66 Stat. 230; Pub. L. 101–649, title V, § 542(a), Nov. 29, 1990, 104 Stat. 5057; Pub. L. 103–416, title II, § 219(s), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title III, §§ 308(g)(4)(C), 382(a), Sept. 30, 1996, 110 Stat. 3009–623, 3009–651.)

REFERENCES IN TEXT

Sections 203(b) and 543(a) of the Immigration Act of 1990, referred to in subsec. (b)(2)(A), are sections 203(b) and 543(a) of Pub. L. 101–649. Section 203(b) of the Act amended section 1281 of this title. Section 543(a) of the Act amended sections 1221, former 1227, 1229 (now 1224), 1284, 1285, 1286, 1287, 1321, 1322, and 1323 of this title.

Section 605 of Public Law 104–134, referred to in subsec. (b)(3)(C), is section 101[(a)] [title VI, § 605] of Pub. L. 104–134, title I, Apr. 26, 1996, 110 Stat. 1321, 1321–63, which is not classified to the Code.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 308(g)(4)(C), substituted ''1224, 1253(c)(2)'' for ''1227, 1229, 1253''.

Subsec. (b). Pub. L. 104–208, § 382(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Notwithstanding section 3302 of title 31, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 shall be credited to the appropriation—

''(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this subchapter, including—

''(A) the identification, investigation, and apprehension of criminal aliens,

''(B) the implementation of the system described in section 1252(a)(3)(A) of this title, and

''(C) for the repair, maintenance, or construction on the United States border, in areas experiencing

high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and

''(2) for the Executive Office for Immigration Review in the Department of Justice for the purpose of removing the backlogs in the preparation of transcripts of deportation proceedings conducted under section 1252 of this title.''

1994—Subsec. (b)(1)(C). Pub. L. 103–416 substituted ''maintenance'' for ''maintainance''.

1990—Pub. L. 101–649 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(4)(C) 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 382(c) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this section [amending this section and section 1356 of this title] shall apply to fines and penalties collected on or after the date of the enactment of this Act [Sept. 30, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 542(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fines and penalties collected on or after January 1, 1991.''

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.

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided*, That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis. Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.

(June 27, 1952, ch. 477, title II, ch. 9, § 281, 66 Stat. 230; Pub. L. 89–236, § 14, Oct. 3, 1965, 79 Stat. 919; Pub. L. 90–609, § 1, Oct. 21, 1968, 82 Stat. 1199; Pub. L. 105–54, § 2(a), Oct. 6, 1997, 111 Stat. 1175.)

REFERENCES IN TEXT

The Headquarters Agreement, referred to in text, is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1997—Pub. L. 105–54 inserted at end ''Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.''

1968—Pub. L. 90–609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89–236, § 14(a), (b), designated opening provision beginning ''The following fees shall be charged:'' and ending with the end of par. (7) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1155(b) of this title in par. (6).

Subsec. (b). Pub. L. 89–236, § 14(c), added subsec. (b).

Subsec. (c). Pub. L. 89–236, § 14(d), designated closing provision consisting of the paragraph beginning ''The fees for the furnishing'' as subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 2(b) of Pub. L. 105–54 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 6, 1997].''

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.

SURCHARGE FOR PROCESSING MACHINE READABLE NONIMMIGRANT VISAS

Pub. L. 107–77, title IV, Nov. 28, 2001, 115 Stat. 783, which provided in part that notwithstanding section 140(a)(5), and the second sentence of section 140(a)(3), of Pub. L. 103–236 [below], fees could be collected during fiscal years 2002 and 2003, under the authority of section 140(a)(1), and that all fees so collected would be deposited in fiscal years 2002 and 2003 as an offsetting collection to appropriations made under this heading to recover costs under section 140(a)(2) and would remain available until expended, was from the Department of State and Related Agency Appropriations Act, 2002, and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 106–553, § 1(a)(2) [title IV], Dec. 21, 2000, 114 Stat. 2762, 2762A–90.

Pub. L. 106–113, div. B, § 1000(a)(1) [title IV], Nov. 29, 1999, 113 Stat. 1535, 1501A–39.

Pub. L. 105–277, div. A, § 101(b) [title IV], Oct. 21, 1998, 112 Stat. 2681–50, 2681–93.

Pub. L. 105–119, title IV, Nov. 26, 1997, 111 Stat. 2494.

Pub. L. 105–46, § 116, Sept. 30, 1997, 111 Stat. 1157.

Pub. L. 104–208, div. A, title I, § 101(a) [title IV], Sept. 30, 1996, 110 Stat. 3009, 3009–46.

Pub. L. 104–134, title I, § 101[(a)] [title IV], Apr. 26, 1996, 110 Stat. 1321, 1321–36; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105–277, div. A, § 101(b) [title IV, § 410(a)], Oct. 21, 1998, 112 Stat. 2681–50, 1681–102, provided that:

''(1)(A) Notwithstanding any other provision of law and subject to subparagraph (B), the Secretary of State and the Attorney General shall impose, for the processing of any application for the issuance of a machine readable combined border crossing card and nonimmigrant visa under section 101(a)(15)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)], a fee of $13 (for recovery of the costs of manufacturing the combined card and visa) in the case of any alien under 15 years of age where the application for the machine readable combined border crossing card and nonimmigrant visa is made in Mexico by a citizen of Mexico who has at least one parent or guardian who has a visa under such section or is applying for a machine readable combined border crossing card and nonimmigrant visa under such section as well.

''(B) The Secretary of State and the Attorney General may not commence implementation of the requirement in subparagraph (A) until the later of—

''(i) the date that is 6 months after the date of enactment of this Act [Oct. 21, 1998]; or

''(ii) the date on which the Secretary sets the amount of the fee or surcharge in accordance with paragraph (3).

''(2)(A) Except as provided in subparagraph (B), if the fee for a machine readable combined border crossing card and nonimmigrant visa issued under section 101(a)(15)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)] has been reduced under paragraph (1) for a child under 15 years of age, the machine readable combined border crossing card and nonimmigrant visa shall be issued to expire on the earlier of—

''(i) the date on which the child attains the age of 15; or

''(ii) ten years after its date of issue.

''(B) At the request of the parent or guardian of any alien under 15 years of age otherwise covered by subparagraph (A), the Secretary of State and the Attorney General may charge the non-reduced fee for the processing of an application for the issuance of a machine readable combined border crossing card and nonimmigrant visa under section 101(a)(15)(B) of the Immigration and Nationality Act provided that the machine readable combined border crossing card and nonimmigrant visa is issued to expire as of the same date as is usually provided for visas issued under that section.

''(3) Notwithstanding any other provision of law, the Secretary of State shall set the amount of the fee or surcharge authorized pursuant to section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note [set out below]) for the processing of machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas, including the costs of processing the machine readable combined border crossing cards and nonimmigrant visas for which the fee is reduced pursuant to this subsection.''

[Pub. L. 106–113, div. B, § 1000(a)(1) [title IV, § 404], Nov. 29, 1999, 113 Stat. 1535, 1501A–45, provided that: ''Beginning in fiscal year 2000 and thereafter, section 410(a) of the Department of State and Related Agencies Appropriations Act, 1999, as included in Public Law 105–277 [set out above], shall be in effect.'']

[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.]

Pub. L. 103–236, title I, § 140(a), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103–415, § 1(bb), Oct. 25, 1994, 108 Stat. 4302; Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 231], Nov. 29, 1999, 113 Stat. 1536, 1501A–425; Pub. L. 107–173, title I, § 103(a), May 14, 2002, 116 Stat. 547; Pub. L. 107–228, div. A, title II, § 234, Sept. 30, 2002, 116 Stat. 1373, provided that:

''(1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

''(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

''(3) For the fiscal year 2003, any amount that exceeds $460,000,000 may be made available only if a notification is submitted to Congress in accordance with the procedures applicable to reprogramming notifications under section 34 of the State Department Basic Authorities Act of 1956 [22 U.S.C. 2706].''

Provisions directing the continuing effect for specific periods of authorities provided under section 140(a) of Pub. L. 103–236, set out above, were contained in the following appropriation acts:

Pub. L. 104–92, title I, § 112, Jan. 6, 1996, 110 Stat. 18.
Pub. L. 104–56, title I, § 118, Nov. 20, 1995, 109 Stat. 552.
Pub. L. 104–54, title I, § 118, Nov. 19, 1995, 109 Stat. 544.
Pub. L. 104–31, § 119, Sept. 30, 1995, 109 Stat. 281.

§ 1352. Printing of reentry permits and blank forms of manifest and crew lists; sale to public

(a) Reentry permits issued under section 1203 of this title shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed by the Attorney General.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Documents, upon prepayment, copies of blank forms of manifests and crew lists and such other forms as may be prescribed and authorized by the Attorney General to be sold pursuant to the provisions of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 282, 66 Stat. 231.)

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.

§ 1353. Travel expenses and expense of transporting remains of officers and employees dying outside of United States

When officers, inspectors, or other employees of the Service are ordered to perform duties in a foreign country, or are transferred from one station to another, in the United States or in a foreign country, or while performing duties in any foreign country become eligible for voluntary retirement and return to the United States, they shall be allowed their traveling expenses in accordance with such regulations as the Attorney General may deem advisable, and they may also be allowed, within the discretion and under written orders of the Attorney General, the expenses incurred for the transfer of their wives and dependent children, their household effects and other personal property, includ-

ing the expenses for packing, crating, freight, unpacking, temporary storage, and drayage thereof in accordance with subchapter II of chapter 57 of title 5. The expense of transporting the remains of such officers, inspectors, or other employees who die while in, or in transit to, a foreign country in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses of such interment and of preparation for shipment, are authorized to be paid on the written order of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 9, § 283, 66 Stat. 231; Pub. L. 100–525, § 9(p), Oct. 24, 1988, 102 Stat. 2621.)

AMENDMENTS

1988—Pub. L. 100–525 substituted ''subchapter II of chapter 57 of title 5'' for ''the Act of August 2, 1946 (60 Stat. 806; 5 U.S.C., sec. 73b–1)''.

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.

§ 1353a. Officers and employees; overtime services; extra compensation; length of working day

The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian) and two additional days' pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed.

(Mar. 2, 1931, ch. 368, § 1, 46 Stat. 1467; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; June 27, 1952, ch. 477, title IV, § 402(i)(1), 66 Stat. 278.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Ex. Ord. No. 6166, is authority for the substitution of ''Immigration and Naturalization Service'' for ''Immigration Service''; and 1940 Reorg. Plan No. V. is authority for the substitution of ''Attorney General'' for ''Secretary of Labor.'' See note set out under section 1551 of this title.

Section was formerly classified to section 342c of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109a of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted ''immigration officers'' for ''inspectors''.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

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.

§ 1353b. Extra compensation; payment

The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance arriving in the United States from a foreign port to the Attorney General, who shall pay the same to the several immigration officers and employees entitled thereto as provided in this section and section 1353a of this title. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual inspection or examination of passengers or crew takes place or not: *Provided*, That this section shall not apply to the inspection at designated ports of entry of passengers arriving by international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the Great Lakes and connecting waterways, when operating on regular schedules.

(Mar. 2, 1931, ch. 368, § 2, 46 Stat. 1467; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

1940 Reorg. Plan No. V is authority for the substitution of ''Attorney General'' for ''Secretary of Labor.'' See note set out under section 1551 of this title.

Section was formerly classified to section 342d of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109b of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize

their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

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.

§ 1353c. Immigration officials; service in foreign contiguous territory

Nothing in section 209 of title 18 relative to augmenting salaries of Government officials from outside sources shall prevent receiving reimbursements for services of immigration officials incident to the inspection of aliens in foreign contiguous territory and such reimbursement shall be credited to the appropriation, ''Immigration and Naturalization Service—Salaries and Expenses.''

(Mar. 4, 1921, ch. 161, §1, 41 Stat. 1424; Sept. 3, 1954, ch. 1263, §6, 68 Stat. 1227.)

CODIFICATION

''Section 209 of title 18'' substituted in text for ''section 1914 of title 18'' on authority of section 2 of Pub. L. 87–849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 203 of Title 18, Crimes and Criminal Procedure.

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Section constituted a part of section 1 of act Mar. 4, 1921, ch. 161, 41 Stat. 1424, which rendered act Mar. 3, 1917, ch. 163, §1, 39 Stat. 1106 (section 66 of former Title 5), inapplicable to immigration officials under the circumstances stated.

Section was formerly classified to section 68 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109c of this title.

AMENDMENTS

1954—Act Sept. 3, 1954, amended section generally, substituting ''section 1914 of title 18'' for reference to the proviso in the Act of March 3, 1917 (5 U.S.C. 66), and substituting ''Immigration and Naturalization Service—Salaries and Expenses'' for ''Expenses of regulating immigration''.

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.

§ 1353d. Disposition of money received as extra compensation

Moneys collected on or after July 1, 1941, as extra compensation for overtime service of immigration officers and employees of the Immigration Service pursuant to sections 1353a and 1353b of this title, shall be deposited in the Treasury of the United States to the credit of the appropriation for the payment of salaries, field personnel of the Immigration and Naturalization Service, and the appropriation so credited shall be available for the payment of such compensation.

(Aug. 22, 1940, ch. 688, 54 Stat. 858; June 27, 1952, ch. 477, title IV, §402(i)(2), 66 Stat. 278.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Section was formerly classified to section 342e of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109d of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted ''immigration officers'' for ''inspectors''.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

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.

§ 1354. Applicability to members of the Armed Forces

Nothing contained in this subchapter shall be construed so as to limit, restrict, deny, or affect the coming into or departure from the United States of an alien member of the Armed Forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces: *Provided*, That nothing contained in this section shall be construed to give to or confer upon any such alien any other privileges, rights, benefits, exemptions, or immunities under this chapter, which are not otherwise specifically granted by this chapter.

(June 27, 1952, ch. 477, title II, ch. 9, §284, 66 Stat. 232.)

§ 1355. Disposal of privileges at immigrant stations; rentals; retail sale; disposition of receipts

(a) Subject to such conditions and limitations as the Attorney General shall prescribe, all exclusive privileges of exchanging money, transporting passengers or baggage, keeping eating houses, or other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder (other than an alien) in accordance with the provision of section 5 of title 41 and for

the use of Government property in connection with the exercise of such exclusive privileges a reasonable rental may be charged. The feeding of aliens, or the furnishing of any other necessary service in connection with any United States immigrant station, may be performed by the Service without regard to the foregoing provisions of this subsection if the Attorney General shall find that it would be advantageous to the Government in terms of economy and efficiency. No intoxicating liquors shall be sold at any immigrant station.

(b) Such articles determined by the Attorney General to be necessary to the health and welfare of aliens detained at any immigrant station, when not otherwise readily procurable by such aliens, may be sold at reasonable prices to such aliens through Government canteens operated by the Service, under such conditions and limitations as the Attorney General shall prescribe.

(c) All rentals or other receipts accruing from the disposal of privileges, and all moneys arising from the sale of articles through Service-operated canteens, authorized by this section, shall be covered into the Treasury to the credit of the appropriation for the enforcement of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 285, 66 Stat. 232.)

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.

§ 1356. Disposition of moneys collected under the provisions of this subchapter

(a) Detention, transportation, hospitalization, and all other expenses of detained aliens; expenses of landing stations

All moneys paid into the Treasury to reimburse the Service for detention, transportation, hospitalization, and all other expenses of detained aliens paid from the appropriation for the enforcement of this chapter, and all moneys paid into the Treasury to reimburse the Service for expenses of landing stations referred to in section 1223(b) of this title paid by the Service from the appropriation for the enforcement of this chapter, shall be credited to the appropriation for the enforcement of this chapter for the fiscal year in which the expenses were incurred.

(b) Purchase of evidence

Moneys expended from appropriations for the Service for the purchase of evidence and subsequently recovered shall be reimbursed to the current appropriation for the Service.

(c) Fees and administrative fines and penalties; exception

Except as otherwise provided in subsection (a) and subsection (b) of this section, or in any other provision of this subchapter, all moneys received in payment of fees and administrative fines and penalties under this subchapter shall be covered into the Treasury as miscellaneous receipts: *Provided, however,* That all fees received from applicants residing in the Virgin Islands of the United States, and in Guam, required to be paid under section 1351 of this title, shall be paid over to the Treasury of the Virgin Islands and to the Treasury of Guam, respectively.

(d) Schedule of fees

In addition to any other fee authorized by law, the Attorney General shall charge and collect $7 per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside of the United States prior to such arrival, aboard a commercial aircraft or commercial vessel.

(e) Limitations on fees

(1) Except as provided in paragraph (3), no fee shall be charged under subsection (d) of this section for immigration inspection or preinspection provided in connection with the arrival of any passenger, other than aircraft passengers, whose journey originated in the following:

(A) Canada,

(B) Mexico,

(C) a State, territory or possession of the United States, or

(D) any adjacent island (within the meaning of section 1101(b)(5) of this title).

(2) No fee may be charged under subsection (d) of this section with respect to the arrival of any passenger—

(A) who is in transit to a destination outside the United States, and

(B) for whom immigration inspection services are not provided.

(3) The Attorney General shall charge and collect $3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): *Provided*, That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by ferry, or by Great Lakes vessels on the Great Lakes and connecting waterways when operating on a regular schedule. For the purposes of this paragraph, the term ''ferry'' means a vessel, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

(f) Collection

(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the United States shall—

(A) collect from that individual the fee charged under subsection (d) of this section at the time the document or ticket is issued; and

(B) identify on that document or ticket the fee charged under subsection (d) of this section as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the United States is issued in a foreign country; and

(B) the fee charged under subsection (d) of this section is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Attorney General at any time before the date that is thirty-one days after the close of the calendar quarter in which the fees are collected, except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment. Regulations issued by the Attorney General under this subsection with respect to the collection of the fees charged under subsection (d) of this section and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(g) Provision of immigration inspection and preinspection services

Notwithstanding section 1353b of this title, or any other provision of law, the immigration services required to be provided to passengers upon arrival in the United States on scheduled airline flights shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (d) of this section) to airlines and airline passengers at:

(1) immigration serviced airports, and

(2) places located outside of the United States at which an immigration officer is stationed for the purpose of providing such immigration services.

(h) Disposition of receipts

(1)(A) There is established in the general fund of the Treasury a separate account which shall be known as the ''Immigration User Fee Account''. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended..[1] At the end of each 2-year period, beginning with the creation of this account, the Attorney General, following a public rulemaking with opportunity for notice and comment, shall submit a report to the Congress concerning the status of the account, including any balances therein, and recommend any adjustment in the prescribed fee that may be required to ensure that the receipts collected from the fee charged for the succeeding two years equal, as closely as possible, the cost of providing these services.

(B) Notwithstanding any other provisions of law, all civil fines or penalties collected pursuant to sections 1253(c), 1321, and 1323 of this title and all liquidated damages and expenses collected pursuant to this chapter shall be deposited in the Immigration User Fee Account.

(2)(A) The Secretary of the Treasury shall refund out of the Immigration User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General in providing immigration inspection and preinspection services for commercial aircraft or vessels and in—

(i) providing overtime immigration inspection services for commercial aircraft or vessels;

(ii) administration of debt recovery, including the establishment and operation of a national collections office;

(iii) expansion, operation and maintenance of information systems for nonimmigrant control and debt collection;

(iv) detection of fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;

(v) providing detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any alien who is inadmissible under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and

(vi) providing removal and asylum proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels including immigration removal proceedings resulting from presentation of fraudulent documents and failure to present documentation and for any alien who is inadmissible under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry.

The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

(i) Reimbursement

Notwithstanding any other provision of law, the Attorney General is authorized to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the Attorney General in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses

[1] So in original.

of individuals employed by the Attorney General to provide such immigration inspection services). The Attorney General's authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.

(j) Regulations

The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(k) Advisory committee

In accordance with the provisions of the Federal Advisory Committee Act, the Attorney General shall establish an advisory committee, whose membership shall consist of representatives from the airline and other transportation industries who may be subject to any fee or charge authorized by law or proposed by the Immigration and Naturalization Service for the purpose of covering expenses incurred by the Immigration and Naturalization Service. The advisory committee shall meet on a periodic basis and shall advise the Attorney General on issues related to the performance of the inspectional services of the Immigration and Naturalization Service. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

(*l*) Report to Congress

In addition to the reporting requirements established pursuant to subsection (h) of this section, the Attorney General shall prepare and submit annually to the Congress, not later than March 31st of each year, a statement of the financial condition of the ''Immigration User Fee Account'' including beginning account balance, revenues, withdrawals and their purpose, ending balance, projections for the ensuing fiscal year and a full and complete workload analysis showing on a port by port basis the current and projected need for inspectors. The statement shall indicate the success rate of the Immigration and Naturalization Service in meeting the forty-five minute inspection standard and shall provide detailed statistics regarding the number of passengers inspected within the standard, progress that is being made to expand the utilization of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics and the steps being taken to correct any nonconformity.

(m) Immigration Examinations Fee Account

Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled ''Immigration Examinations Fee Account'' in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: *Provided, however*, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

(n) Reimbursement of administrative expenses; transfer of deposits to General Fund of United States Treasury

All deposits into the ''Immigration Examinations Fee Account'' shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the ''Immigration Examinations Fee Account''.

(*o*) Annual financial reports to Congress

The Attorney General shall prepare and submit annually to Congress statements of financial condition of the ''Immigration Examinations Fee Account'', including beginning account balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.

(p) Additional effective dates

The provisions set forth in subsections (m), (n), and (*o*) of this section apply to adjudication and naturalization services performed and to related fees collected on or after October 1, 1988.

(q) Land Border Inspection Fee Account

(1)(A)(i) Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, not more than 96 projects under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such projects may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.

(ii) This subparagraph shall take effect, with respect to any project described in clause (1)[2] that was not authorized to be commenced before September 30, 1996, 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of such project.

(iii) The Attorney General shall prepare and submit on a quarterly basis a status report on each land border inspection project implemented under this subparagraph.

(B) The Attorney General, in consultation with the Secretary of the Treasury, may conduct pilot projects to demonstrate the use of designated ports of entry after working hours through the use of card reading machines or other appropriate technology.

(2) All of the fees collected under this subsection, including receipts for services per-

[2] So in original. Probably should be clause ''(i)''.

formed in processing forms I–94, I–94W, and I–68, and other similar applications processed at land border ports of entry, shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the Land Border Inspection Fee Account.

(3)(A) The Secretary of the Treasury shall refund, at least on a quarterly basis amounts to any appropriations for expenses incurred in providing inspection services at land border points of entry. Such expenses shall include—

(i) the providing of overtime inspection services;

(ii) the expansion, operation and maintenance of information systems for nonimmigrant control;

(iii) the hire of additional permanent and temporary inspectors;

(iv) the minor construction costs associated with the addition of new traffic lanes (with the concurrence of the General Services Administration);

(v) the detection of fraudulent documents used by passengers travelling to the United States;

(vi) providing for the administration of said account.

(B) The amounts required to be refunded from the Land Border Inspection Fee Account for fiscal years 1992 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 101–162.

(4) The Attorney General will prepare and submit annually to the Congress statements of financial condition of the Land Border Immigration Fee Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year.

(r) Breached Bond/Detention Fund

(1) Notwithstanding any other provision of law, there is established in the general fund of the Treasury a separate account which shall be known as the Breached Bond/Detention Fund (in this subsection referred to as the ''Fund'').

(2) There shall be deposited as offsetting receipts into the Fund all breached cash and surety bonds, in excess of $8,000,000, posted under this chapter which are recovered by the Department of Justice, and amount[3] described in section 1255(i)(3)(b)[4] of this title.

(3) Such amounts as are deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Attorney General for the following purposes—

(i) for expenses incurred in the collection of breached bonds, and

(ii) for expenses associated with the detention of illegal aliens.

(4) The amounts required to be refunded from the Fund for fiscal year 1998 and thereafter shall be refunded in accordance with estimates made in the budget request of the President for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after Congressional reprogramming notification in accordance with the reprogramming guidelines for the applicable fiscal year.

(5) The Attorney General shall prepare and submit annually to the Congress, statements of financial condition of the Fund, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.

(6) For fiscal year 1993 only, the Attorney General may transfer up to $1,000,000 from the Immigration User Fee Account to the Fund for initial expenses necessary to enhance collection efforts: *Provided*, That any such transfers shall be refunded from the Fund back to the Immigration User Fee Account by December 31, 1993.

(s) H–1B Nonimmigrant Petitioner Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the ''H–1B Nonimmigrant Petitioner Account''. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the account all fees collected under paragraphs (9) and (11) of section 1184(c) of this title.

(2) Use of fees for job training

50 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 2916a of title 29.

(3) Use of fees for low-income scholarship program

30 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 1869c of title 42 for low-income students enrolled in a program of study leading to a degree in mathematics, engineering, or computer science.

(4) National Science Foundation competitive grant program for K–12 math, science and technology education

(A) In general

10 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct or matching grant program to support private-public partnerships in K–12 education.

(B) Types of programs covered

The Director shall award grants to such programs, including those which support the development and implementation of stand-

[3] So in original.

[4] So in original. Probably should be section ''1255(i)(3)(B)''.

ards-based instructional materials models and related student assessments that enable K–12 students to acquire an understanding of science, mathematics, and technology, as well as to develop critical thinking skills; provide systemic improvement in training K–12 teachers and education for students in science, mathematics, and technology; support the professional development of K–12 math and science teachers in the use of technology in the classroom; stimulate system-wide K–12 reform of science, mathematics, and technology in rural, economically disadvantaged regions of the United States; provide externships and other opportunities for students to increase their appreciation and understanding of science, mathematics, engineering, and technology (including summer institutes sponsored by an institution of higher education for students in grades 7–12 that provide instruction in such fields); involve partnerships of industry, educational institutions, and community organizations to address the educational needs of disadvantaged communities; provide college preparatory support to expose and prepare students for careers in science, mathematics, engineering, and technology; and provide for carrying out systemic reform activities under section 1862(a)(1) of title 42.

(5) Use of fees for duties relating to petitions

5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Homeland Security until expended to carry out duties under paragraphs (1) and (9) of section 1184(c) of this title related to petitions made for nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title, under paragraph (1)(C) or (D) of section 1154[5] of this title related to petitions for immigrants described in section 1153(b) of this title.

(6) Use of fees for application processing and enforcement

For fiscal year 1999, 4 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and for carrying out section 1182(n)(2) of this title. Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and section 1182(a)(5)(A) of this title.

(t) Genealogy Fee

(1) There is hereby established the Genealogy Fee for providing genealogy research and information services. This fee shall be deposited as offsetting collections into the Examinations Fee Account. Fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services.

(2) The Attorney General will prepare and submit annually to Congress statements of the financial condition of the Genealogy Fee.

(3) Any officer or employee of the Immigration and Naturalization Service shall collect fees prescribed under regulation before disseminating any requested genealogical information.

(u) Premium fee for employment-based petitions and applications

The Attorney General is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at $1,000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index.

(v) Fraud Prevention and Detection Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the ''Fraud Prevention and Detection Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (12) or (13) of section 1184(c) of this title.

(2) Use of fees to combat fraud

(A) Secretary of State

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

(i) to increase the number[6] diplomatic security personnel assigned exclusively or primarily to the function of preventing and detecting fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title;

(ii) otherwise to prevent and detect visa fraud, including primarily fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title, in cooperation with the Secretary of Homeland Security or pursuant to the terms of a memorandum of understanding or other agreement between the Secretary of State and the Secretary of Homeland Security; and

(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

(B) Secretary of Homeland Security

One-third of the amounts deposited into the Fraud Prevention and Detection Ac-

[5] So in original. Probably should be section ''1154(a)''.

[6] So in original. Probably should be followed by ''of''.

count shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title.

(C) Secretary of Labor

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 1182(n) of this title.

(D) Consultation

The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the Fraud Prevention and Detection Account or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(ii) of this title.

(June 27, 1952, ch. 477, title II, ch. 9, § 286, 66 Stat. 232; Pub. L. 97–116, § 13, Dec. 29, 1981, 95 Stat. 1618; Pub. L. 99–500, § 101(b) [title II, § 205(a), formerly § 205], Oct. 18, 1986, 100 Stat. 1783–39, 1783–53, renumbered § 205(a), Pub. L. 100–525, § 4(a)(2)(A), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 99–591, § 101(b) [title II, § 205], Oct. 30, 1986, 100 Stat. 3341–39, 3341–53; Pub. L. 99–653, § 7(d)(1), Nov. 14, 1986, as added Pub. L. 100–525, § 8(f), Oct. 24, 1988, 102 Stat. 2617; Pub. L. 100–71, title I, § 1, July 11, 1987, 101 Stat. 394; Pub. L. 100–459, title II, § 209(a), Oct. 1, 1988, 102 Stat. 2203; Pub. L. 100–525, § 4(a)(1), (d), Oct. 24, 1988, 102 Stat. 2614, 2615; Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000; Pub. L. 101–515, title II, § 210(a), (d), Nov. 5, 1990, 104 Stat. 2120, 2121; Pub. L. 102–232, title III, § 309(a)(1)(A)(i), (B), (2), (b)(12), Dec. 12, 1991, 105 Stat. 1757–1759; Pub. L. 102–395, title I, § 112, Oct. 6, 1992, 106 Stat. 1843; Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1161; Pub. L. 103–416, title II, § 219(t), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title I, §§ 122(a), 124(a)(1), title III, §§ 308(d)(3)(A), (4)(K), (e)(1)(L), (g)(1), 376(b), 382(b), title VI, § 671(b)(11), (e)(5), (6), Sept. 30, 1996, 110 Stat. 3009–560, 3009–562, 3009–617 to 3009–619, 3009–622, 3009–648, 3009–651, 3009–722, 3009–723; Pub. L. 105–119, title I, § 110(1), (2), Nov. 26, 1997, 111 Stat. 2457; Pub. L. 105–277, div. A, § 101(b) [title I, § 114], div. C, title IV, § 414(b), Oct. 21, 1998, 112 Stat. 2681–50, 2681–68, 2681–652; Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 118], Nov. 29, 1999, 113 Stat. 1535, 1501A–22; Pub. L. 106–313, title I, §§ 110(a), 113, Oct. 17, 2000, 114 Stat. 1255, 1261; Pub. L. 106–553, § 1(a)(2) [title I, § 112], Dec. 21, 2000, 114 Stat. 2762, 2762A–68; Pub. L. 106–554, § 1(a)(1) [title I, § 106], Dec. 21, 2000, 114 Stat. 2763, 2763A–11; Pub. L. 107–77, title I, §§ 109, 110, Nov. 28, 2001, 115 Stat. 765; Pub. L. 107–173, title IV, § 403(a), May 14, 2002, 116 Stat. 559; Pub. L. 107–206, title I, § 202, Aug. 2, 2002, 116 Stat. 832; Pub. L. 107–273, div. C, title I, § 11016(2), Nov. 2, 2002, 116 Stat. 1824; Pub. L. 107–296, title IV, § 457, Nov. 25, 2002, 116 Stat. 2201; Pub. L. 108–7, div. B, title I, § 108, div. L, § 107, Feb. 20, 2003, 117 Stat. 67, 532; Pub. L. 108–77, title IV, § 402(d)(2), Sept. 3, 2003, 117 Stat. 946; Pub. L. 108–447, div. J, title IV, §§ 426(b), 427, Dec. 8, 2004, 118 Stat. 3357, 3358; Pub. L. 109–13, div. A, title VI, § 6046, div. B, title IV, § 403(b), May 11, 2005, 119 Stat. 295, 319; Pub. L. 109–472, § 2, Jan. 11, 2007, 120 Stat. 3554.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Subchapter C of chapter 33 of title 26, referred to in subsec. (f)(3), is classified to section 4261 et seq. of Title 26, Internal Revenue Code.

The Federal Advisory Committee Act, referred to in subsec. (k), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 606 of Public Law 101–162, referred to in subsec. (q)(3)(B), is section 606 of Pub. L. 101–162, title VI, Nov. 21, 1989, 103 Stat. 1031, which is not classified to the Code.

AMENDMENTS

2007—Subsec. (v)(2)(A)(i). Pub. L. 109–472, § 2(1), inserted ''or primarily'' after ''exclusively''.

Subsec. (v)(2)(A)(ii). Pub. L. 109–472, § 2(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''otherwise to prevent and detect such fraud pursuant to the terms of a memorandum of understanding or other cooperative agreement between the Secretary of State and the Secretary of Homeland Security; and''.

2005—Subsec. (s)(6). Pub. L. 109–13, § 6046, inserted ''and section 1182(a)(5)(A) of this title'' before period at end.

Subsec. (v). Pub. L. 109–13, § 403(b)(2), struck out ''H–1B and L'' before ''Fraud Prevention'' in heading.

Subsec. (v)(1). Pub. L. 109–13, § 403(b)(1)(A), (B), struck out ''H–1B and L'' before ''Fraud Prevention'' and substituted ''paragraph (12) or (13) of section 1184(c) of this title'' for ''section 1184(c)(12) of this title''.

Subsec. (v)(2)(A). Pub. L. 109–13, § 403(b)(1)(A), struck out ''H–1B and L'' before ''Fraud Prevention'' in introductory provisions.

Subsec. (v)(2)(A)(i). Pub. L. 109–13, § 403(b)(1)(C), substituted ''(H)(i), (H)(ii),'' for ''(H)(i)''.

Subsec. (v)(2)(B). Pub. L. 109–13, § 403(b)(1)(A), (C), struck out ''H–1B and L'' before ''Fraud Prevention'' and substituted ''(H)(i), (H)(ii),'' for ''(H)(i)''.

Subsec. (v)(2)(C). Pub. L. 109–13, § 403(b)(1)(A), struck out ''H–1B and L'' before ''Fraud Prevention''.

Subsec. (v)(2)(D). Pub. L. 109–13, § 403(b)(1)(A), (D), struck out ''H–1B and L'' before ''Fraud Prevention'' and inserted ''or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(ii) of this title'' before period at end.

2004—Subsec. (s)(2). Pub. L. 108–447, § 427(1), substituted ''50 percent'' for ''55 percent''.

Subsec. (s)(3). Pub. L. 108–447, § 427(2), substituted ''30 percent'' for ''22 percent''.

Subsec. (s)(4)(A). Pub. L. 108–447, § 427(3), substituted ''10 percent'' for ''15 percent''.

Subsec. (s)(5). Pub. L. 108–447, § 427(4), substituted ''5 percent'' for ''4 percent'' and ''Secretary of Homeland Security'' for ''Attorney General''.

Subsec. (s)(6). Pub. L. 108–447, § 427(5), substituted ''Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing

time for applications under section 1182(n)(1) of this title'' for ''Beginning with fiscal year 2000, 2 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and section 1182(a)(5)(A) of this title, and 2 percent of such amounts shall remain available to such Secretary until expended for carrying out section 1182(n)(2) of this title. Notwithstanding the preceding sentence, both of the amounts made available for any fiscal year (beginning with fiscal year 2000) pursuant to the preceding sentence shall be available to such Secretary, and shall remain available until expended, only for decreasing the processing time for applications under section 1182(n)(1) of this title until the Secretary submits to the Congress a report containing a certification that, during the most recently concluded calendar year, the Secretary substantially complied with the requirement in section 1182(n)(1) of this title relating to the provision of the certification described in section 1101(a)(15)(H)(i)(b) of this title within a 7-day period''.

Subsec. (v). Pub. L. 108–447, § 426(b), added subsec. (v).

2003—Subsec. (e)(3). Pub. L. 108–7, § 108, added par. (3) and struck out former par. (3) which read as follows: ''The Attorney General shall charge and collect $3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): *Provided*, That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries, or Great Lakes Vessels on the Great Lakes and connecting waterways.''

Subsec. (m). Pub. L. 108–7, § 107, repealed Pub. L. 107–296, § 457. See 2002 Amendment note below.

Subsec. (s)(1). Pub. L. 108–77, §§ 107(c), 402(d)(2), temporarily substituted ''paragraphs (9) and (11) of section 1184(c) of this title'' for ''section 1184(c)(9) of this title''. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (e)(3). Pub. L. 107–206 substituted ''shall'' for ''is authorized to'' and ''requirement'' for ''authorization''.

Subsec. (g). Pub. L. 107–173 struck out '', within forty-five minutes of their presentation for inspection,'' after ''adequately provided'' in introductory provisions.

Subsec. (m). Pub. L. 107–296, § 457, which directed the substitution of ''such services.'' for ''such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'', was repealed by Pub. L. 108–7, § 107.

Subsec. (q)(2). Pub. L. 107–273 inserted '', including receipts for services performed in processing forms I–94, I–94W, and I–68, and other similar applications processed at land border ports of entry,'' after ''subsection''.

2001—Subsec. (d). Pub. L. 107–77, § 109(1), substituted ''$7'' for ''$6''.

Subsec. (e)(1). Pub. L. 107–77, § 109(2), substituted ''Except as provided in paragraph (3), no'' for ''No''.

Subsec. (e)(3). Pub. L. 107–77, § 109(3), added par. (3).

Subsec. (q)(1)(A)(i). Pub. L. 107–77, § 110, which directed the substitution of ''96'' for ''6'' in section 286(q)(1)(A) of the Immigration and Nationality Act of 1953, was executed by making the substitution in section 286(q)(1)(A) of the Immigration and Nationality Act to reflect the probable intent of Congress.

2000—Subsec. (s)(2). Pub. L. 106–313, § 110(a)(1), substituted ''55 percent'' for ''56.3 percent''.

Subsec. (s)(3). Pub. L. 106–313, § 113(b), provided that in the amendment made by section 110(a)(2) of Pub. L. 106–313 the figure to be inserted is deemed to be ''22 percent''. See below.

Pub. L. 106–313, § 110(a)(2), substituted ''23.5 percent'' for ''28.2 percent''. See above.

Subsec. (s)(4). Pub. L. 106–313, § 110(a)(3), amended heading and text of par. (4) generally. Prior to amendment, text read as follows:

''(A) GRANTS FOR MATHEMATICS, ENGINEERING, OR SCIENCE ENRICHMENT COURSES.—4 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to make merit-reviewed grants, under section 1862(a)(1) of title 42, for programs that provide opportunities for enrollment in year-round academic enrichment courses in mathematics, engineering, or science.

''(B) SYSTEMIC REFORM ACTIVITIES.—4 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out systemic reform activities administered by the National Science Foundation under section 1862(a)(1) of title 42.''

Subsec. (s)(5). Pub. L. 106–313, § 113(a), amended text of par. (5) generally. Prior to amendment, text read as follows: ''1.5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Attorney General until expended to carry out duties under paragraphs (1) and (9) of section 1184(c) of this title related to petitions made for nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title, to decrease the processing time for such petitions, and to carry out duties under section 416 of the American Competitiveness and Workforce Improvement Act of 1998. Such amounts shall be available in addition to any other fees authorized to be collected by the Attorney General with respect to such petitions.''

Subsec. (s)(6). Pub. L. 106–554, which directed amendment of section 286(s)(6) of the Immigration and Naturalization Act by inserting ''and section 1182(a)(5)(A) of this title'' after ''decreasing the processing time for applications under section 1182(n)(1) of this title'', was executed by making the amendment to subsec. (s)(6) of this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress.

Pub. L. 106–313, § 113(b), provided that in the amendments made by section 110(a)(4) and (5) of Pub. L. 106–313 the figures to be inserted are deemed to be ''4 percent'' and ''2 percent'', respectively. See below.

Pub. L. 106–313, § 110(a)(4), substituted ''5 percent'' for ''6 percent''. See above.

Pub. L. 106–313, § 110(a)(5), substituted ''2.5 percent'' for ''3 percent'' in two places. See above.

Subsecs. (t), (u). Pub. L. 106–553 added subsecs. (t) and (u).

1999—Subsec. (q)(1)(A)(ii) to (iv). Pub. L. 106–113, which directed amendment of section 286(q)(1)(A) of the Immigration and Nationality Act of 1953 by striking out cl. (ii), redesignating cl. (iii) as (ii), striking out '', until September 30, 2000,'' after ''submit on a quarterly basis'' in cl. (iv), and redesignating cl. (iv) as (iii), was executed by making the amendment to this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress. Prior to amendment, cl. (ii) read as follows: ''The program authorized in this subparagraph shall terminate on September 30, 2000, unless further authorized by an Act of Congress.''

1998—Subsec. (e)(1)(C). Pub. L. 105–277, § 101(b) [title I, § 114], inserted ''State,'' before ''territory''.

Subsec. (s). Pub. L. 105–277, § 414(b), added subsec. (s).

1997—Subsec. (r)(2). Pub. L. 105–119, § 110(2)(A), inserted '', and amount described in section 1255(i)(3)(b) of this title'' after ''recovered by the Department of Justice''.

Subsec. (r)(3). Pub. L. 105–119, § 110(2)(B), substituted ''Attorney General'' for ''Immigration and Naturalization Service'' in introductory provisions.

Subsec. (r)(4). Pub. L. 105–119, § 110(2)(C), added par. (4) and struck out former par. (4) which read as follows: ''The amount required to be refunded from the Fund for fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notifi-

cation to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 102–395.''

Subsec. (s). Pub. L. 105–119, § 110(1), struck out heading and text of subsec. (s) which established Immigration Detention Account in general fund of the Treasury to be drawn upon to refund to any appropriation amounts paid out for expenses incurred by Attorney General for detention of aliens.

1996—Subsec. (a). Pub. L. 104–208, § 308(g)(1), substituted ''section 1223(b)'' for ''section 1228(b)''.

Subsec. (h)(1)(A). Pub. L. 104–208, § 671(e)(5), inserted period after ''expended''.

Subsec. (h)(1)(B). Pub. L. 104–208, § 382(b), substituted ''1253(c), 1321,'' for ''1321''.

Subsec. (h)(2)(A). Pub. L. 104–208, § 124(a)(1)(B), inserted concluding provisions ''The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.''

Subsec. (h)(2)(A)(iv). Pub. L. 104–208, § 671(e)(6)(A), struck out ''and'' at end.

Pub. L. 104–208, § 124(a)(1)(A), inserted '', including training of, and technical assistance to, commercial airline personnel regarding such detection'' after ''United States''.

Subsec. (h)(2)(A)(v). Pub. L. 104–208, § 671(e)(6)(B)–(E), struck out colon after ''services for'', substituted ''and for any alien'' for ''; and any alien'', adjusted margins, and substituted ''entry; and'' for ''entry.'' at end.

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

Pub. L. 104–208, § 308(d)(3)(A), substituted ''inadmissible'' for ''excludable'' in two places.

Subsec. (h)(2)(A)(vi). Pub. L. 104–208, § 671(e)(6)(B)–(D), struck out colon after ''ports-of-entry for'', substituted ''and for any alien'' for ''; and any alien'', and adjusted margins.

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

Pub. L. 104–208, § 308(d)(3)(A), substituted ''inadmissible'' for ''excludable'' in two places.

Subsec. (q)(1). Pub. L. 104–208, § 122(a)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, a project under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such project may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.''

Subsec. (q)(5). Pub. L. 104–208, § 122(a)(2), struck out par. (5) which read as follows:

''(5)(A) The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress.

''(B) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in paragraph (1).

''(C) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a status report on the land border inspection project.''

Subsec. (r)(4), (6). Pub. L. 104–208, § 671(b)(11), substituted ''the Fund'' for ''Fund'' wherever appearing.

Subsec. (s). Pub. L. 104–208, § 376(b), added subsec. (s).

1994—Subsec. (r). Pub. L. 103–416, § 219(t)(1), substituted ''Fund'' for ''Account'' in heading.

Subsec. (r)(1). Pub. L. 103–416, § 219(t)(2), substituted ''(in this subsection referred to as the 'Fund')'' for ''(hereafter referred to as the Fund)''.

Subsec. (r)(2). Pub. L. 103–416, § 219(t)(3), made technical amendment to reference to this chapter involving corresponding provision of original act.

Subsec. (r)(4). Pub. L. 103–416, § 219(t)(4), struck out ''the Breached Bond/Detention'' before ''Fund''.

Pub. L. 103–416, § 219(t)(5), substituted ''of Public Law 102–395'' for ''of this Act''.

Subsec. (r)(5). Pub. L. 103–416, § 219(t)(6), substituted ''Fund'' for ''account'' after ''condition of the''.

Subsec. (r)(6). Pub. L. 103–416, § 219(t)(4), struck out ''the Breached Bond/Detention'' before ''Fund'' in two places.

1993—Subsec. (d). Pub. L. 103–121 substituted ''$6'' for ''$5''.

Subsec. (h)(2)(A)(v), (vi). Pub. L. 103–121, which directed the amendment of subpar. (A) by ''deleting subsection (v)'' and adding new cls. (v) and (vi), was executed by adding cls. (v) and (vi) and striking out former cl. (v) which read as follows: ''providing detention and deportation services for excludable aliens arriving on commercial aircraft and vessels.'', to reflect the probable intent of Congress.

1992—Subsec. (r). Pub. L. 102–395 added subsec. (r).

1991—Subsec. (e)(1)(D). Pub. L. 102–232, § 309(b)(12), made an amendment to reference to section 1101(b)(5) of this title involving corresponding provision of original act.

Subsec. (f)(3). Pub. L. 102–232, § 309(a)(2)(B), made technical correction to directory language of Pub. L. 101–515, § 210(a)(2). See 1990 Amendment note below.

Subsec. (h)(1)(A). Pub. L. 102–232, § 309(a)(2)(A)(i), inserted a period after ''available until expended''.

Subsec. (m). Pub. L. 102–232, § 309(a)(2)(A)(ii), substituted ''additional'' for ''additonal''.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (n). Pub. L. 102–232, § 309(a)(1)(B), amended directory language of Pub. L. 101–162. See 1989 Amendment note below.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (*o*). Pub. L. 102–232, § 309(a)(1)(A)(i)(II), substituted ''shall'' for ''will''.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (p). Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (q)(2). Pub. L. 102–232, § 309(a)(2)(A)(iii), realigned margin.

Subsec. (q)(3)(A). Pub. L. 102–232, § 309(a)(2)(A)(iii), (iv), inserted ''the'' after ''The Secretary of'' and realigned margin.

Subsec. (q)(5)(B). Pub. L. 102–232, § 309(a)(2)(A)(v), substituted ''paragraph (1)'' for ''subsection (q)(1)''.

1990—Subsec. (e)(1). Pub. L. 101–515, § 210(a)(1), inserted '', other than aircraft passengers,'' after ''arrival of any passenger''.

Subsec. (f)(3). Pub. L. 101–515, § 210(a)(2), as amended by Pub. L. 102–232, § 309(a)(2)(B), inserted '', except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment'' after ''in which the fees are collected''.

Subsec. (g). Pub. L. 101–515, § 210(a)(3), inserted '', within forty-five minutes of their presentation for inspection,'' before ''when needed and''.

Subsec. (h)(1)(A). Pub. L. 101–515, § 210(a)(4), substituted ''There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration User Fee Account'. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended'' for ''All of the fees collected under subsection (d) of this section shall be deposited in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the 'Immigration User Fee Account'.''

Subsec. (*l*). Pub. L. 101–515, § 210(a)(5), added subsec. (*l*).

Subsec. (m). Pub. L. 101–515, § 210(d)(1), (2), inserted ''as offsetting receipts'' after ''shall be deposited'' and inserted before period at end '': *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additonal [sic] costs associated with the administration of the fees collected''.

Subsec. (q). Pub. L. 101–515, § 210(d)(3), added subsec. (q).

1989—Subsec. (n). Pub. L. 101–162, as amended by Pub. L. 102–232, § 309(a)(1)(B), struck out ''in excess of $50,000,000'' before ''shall remain available'' and struck out after first sentence ''At least annually, deposits in the amount of $50,000,000 shall be transferred from the 'Immigration Examinations Fee Account' to the General Fund of the Treasury of the United States.''

1988—Subsec. (a). Pub. L. 100–525, § 8(f), added Pub. L. 99–653, § 7(d)(1). See 1986 Amendment note below.

Subsecs. (d) to (*l*). Pub. L. 100–525, § 4(a)(2)(A), (d), amended Pub. L. 99–500 and Pub. L. 99–591. See 1986 Amendment note below.

Subsec. (f)(3). Pub. L. 100–525, § 4(a)(1)(A), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (g). Pub. L. 100–525, § 4(a)(1)(B), substituted ''section 1353b of this title'' for ''section 1353(a) of this title''.

Subsec. (h)(1)(A). Pub. L. 100–525, § 4(a)(1)(C)(i), amended that portion of the first sentence of subpar. (A) following ''Treasury of the United States'' so as to read '', to remain available until expended''. See 1987 Amendment note below.

Pub. L. 100–525, § 4(a)(1)(C)(ii), substituted ''Fee Account'.'' for ''Fee Account.'''

Subsec. (h)(1)(B). Pub. L. 100–525, § 4(a)(1)(C)(iii)–(v), substituted ''civil fines or penalties'' for ''fines, penalties, liquidated damages or expenses'', inserted ''and all liquidated damages and expenses collected pursuant to this chapter'' after ''this title'', and struck out quotation marks before and after the term ''Immigration User Fee Account''.

Subsec. (h)(2)(A). Pub. L. 100–525, § 4(a)(1)(C)(vi), substituted ''vessels and in—'' for ''vessels and:'' in introductory provisions and inserted ''and'' at end of cl. (iv).

Subsec. (i). Pub. L. 100–525, § 4(a)(1)(D), inserted ''Reimbursement'' as heading.

Subsec. (*l*). Pub. L. 100–525, § 4(a)(1)(E), struck out subsec. (*l*) which read as follows:

''(1) The provisions of this section and the amendments made by this section, shall apply with respect to immigration inspection services rendered after November 30, 1986.

''(2) Fees may be charged under subsection (d) of this section only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.''

Subsecs. (m) to (p). Pub. L. 100–459, as amended by Pub. L. 102–232, § 309(a)(1)(A)(i)(I), added subsecs. (m) to (p).

1987—Subsec. (h)(1)(A). Pub. L. 100–71, directed the general amendment of first sentence of section 205(h)(1)(A) of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1987, in Pub. L. 99–500 and Pub. L. 99–591. Section 205 of such act does not contain a subsec. (h)(1)(A) but did enact subsec. (h)(1)(A) of this section and had such amendment been executed to first sentence of subsec. (h)(1)(A) of this section it would have resulted in inserting '', to remain available until expended'' after ''Treasury of the United States''. See 1988 Amendment note above.

1986—Subsec. (a). Pub. L. 99–653, § 7(d)(1), as added by Pub. L. 100–525, § 8(f), substituted ''section 1228(b) of this title'' for ''section 1228(c) of this title''.

Subsecs. (d) to (*l*). Pub. L. 99–500, § 101(b) [title II, § 205(a), formerly § 205], as redesignated by Pub. L. 100–525, § 4(a)(2)(A), added subsecs. (d) to (*l*).

Pub. L. 99–591, § 101(b) [title II, § 205], a corrected version of Pub. L. 99–500, § 101(b) [title II, § 205(a)], was repealed by Pub. L. 100–525, § 4(d), effective as of Oct. 30, 1986.

1981—Subsecs. (b), (c). Pub. L. 97–116 added subsec. (b), redesignated former subsec. (b) as (c), and inserted ''and subsection (b)'' after ''subsection (a)''.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109–13 effective 14 days after May 11, 2005, and applicable to filings for a fiscal year after fiscal year 2005, see section 403(c) of Pub. L. 109–13, set out as a note under section 1184 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 426(b) of Pub. L. 108–447 effective Dec. 8, 2004, and the fees imposed under such amendment applicable to petitions under section 1184(c) of this title, and applications for nonimmigrant visas under section 1202 of this title, filed on or after the date that is 90 days after Dec. 8, 2004, see section 426(c) of Pub. L. 108–447, set out as a note under section 1184 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out in a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 124(a)(2) of div. C of Pub. L. 104–208 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to expenses incurred during or after fiscal year 1997.''

Amendment by section 308(d)(3)(A), (4)(K), (e)(1)(L), (g)(1) 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 376(b) of Pub. L. 104–208 applicable to applications made on or after the end of the 90-day period beginning Sept. 30, 1996, see section 376(c) of Pub. L. 104–208, set out as a note under section 1255 of this title.

Amendment by section 382(b) of Pub. L. 104–208 applicable to fines and penalties collected on or after Sept. 30, 1996, see section 382(c) of Pub. L. 104–208, set out as a note under section 1330 of this title.

Amendment by section 671(b)(11) of Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, see section 671(b)(14) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(t) of Pub. L. 103–416 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 102–395.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 309(a)(3) of Pub. L. 102–232, as amended by Pub. L. 103–416, title II, § 219(z)(6), Oct. 25, 1994, 108 Stat.

4318, provided that: ''The amendments made by paragraphs (1)(A) [amending this section and section 1455 of this title] and (1)(B) [amending this section] shall be effective as if they were included in the enactment of the Department of Justice Appropriations Act, 1989 [Pub. L. 100–459, title II] and the Department of Justice Appropriations Act, 1990 [Pub. L. 101–162, title II], respectively.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 210(b) of Pub. L. 101–515 provided that: ''The amendment made by subsection (a)(1) of this section [amending this section] shall apply to fees charged only with respect to immigration inspection or preinspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 4(a)(1), (2)(A) of Pub. L. 100–525 effective as if included in enactment of Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Pub. L. 99–500), see section 4(c) of Pub. L. 100–525, set out as a note under section 1222 of this title.

Amendment by section 8(f) 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 section 7(d)(1) of 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.

Pub. L. 99–500, § 101(b) [title II, § 205(b)], as added by Pub. L. 100–525, § 4(a)(2)(B), Oct. 24, 1988, 102 Stat. 2615, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to immigration inspection services rendered after November 30, 1986.

''(2) Fees may be charged under section 286(d) of the Immigration and Nationality Act [8 U.S.C. 1356(d)] only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 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.

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.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

RESTORATION OF PROVISION REGARDING FEES TO COVER THE FULL COSTS OF ALL ADJUDICATION SERVICES

Pub. L. 108–7, div. L, § 107, Feb. 20, 2003, 117 Stat. 532, provided in part: ''That no court shall have jurisdiction over any cause or claim arising under the provisions of section 457 of the Homeland Security Act of 2002 (Public Law 107–296) [amending this section], this section [repealing section 457 of Pub. L. 107–296], or any regulations promulgated thereunder.''

REPORTING REQUIREMENT

Pub. L. 105–277, div. C, title IV, § 414(e), as added by Pub. L. 106–313, title I, § 110(c), Oct. 17, 2000, 114 Stat. 1256, provided that:

''The Secretary of Labor and the Director of the National Science Foundation shall—

''(1) track and monitor the performance of programs receiving H–1B Nonimmigrant Fee grant money; and

''(2) not later than one year after the date of enactment of this subsection [Oct. 17, 2000], submit a report to the Committees on the Judiciary of the House of Representatives and the Senate—[sic]

''(A) the tracking system to monitor the performance of programs receiving H–1B grant funding; and

''(B) the number of individuals who have completed training and have entered the high-skill workforce through these programs.''

DEPOSIT OF RECEIPTS FROM INCREASED CHARGE FOR IMMIGRANT VISAS CAUSED BY PROCESSING FINGERPRINTS

Pub. L. 103–317, title V, Aug. 26, 1994, 108 Stat. 1760, provided in part: ''That hereafter all receipts received from an increase in the charge for Immigrant Visas in effect on September 30, 1994, caused by processing an applicant's fingerprints, shall be deposited in this account as an offsetting collection and shall remain available until expended.''

EXTENSION OF LAND BORDER FEE PILOT PROJECT

Pub. L. 104–208, div. A, § 101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–10, provided in part: ''That the Land Border Fee Pilot Project scheduled to end September 30, 1996 [see subsec. (q) of this section], is extended to September 30, 1999, for projects on both the northern and southern borders of the United States, except that no pilot program may implement a universal land border crossing toll''.

Similar provisions were contained in the following prior appropriations act:

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1161, as amended by Pub. L. 103–317, title I, § 111, Aug. 26, 1994, 108 Stat. 1736, and repealed by Pub. L. 104–208, div. C, title I, § 122(b), Sept. 30, 1996, 110 Stat. 3009–560.

§ 1357. Powers of immigration officers and employees

(a) Powers without warrant

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and

(5) to make arrests—

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,

if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Administration of oath; taking of evidence

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of title 18.

(c) Search without warrant

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this chapter which would be disclosed by such search.

(d) Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien,

the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

(e) Restriction on warrantless entry in case of outdoor agricultural operations

Notwithstanding any other provision of this section other than paragraph (3) of subsection (a) of this section, an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(f) Fingerprinting and photographing of certain aliens

(1) Under regulations of the Attorney General, the Commissioner shall provide for the finger-

printing and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 1229a of this title.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(h) Protecting abused juveniles

An alien described in section 1101(a)(27)(J) of this title who has been battered, abused, neglected, or abandoned, shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under section 1101(a)(27)(J)(iii)(I) of this title.

(June 27, 1952, ch. 477, title II, ch. 9, § 287, 66 Stat. 233; Pub. L. 94–550, § 7, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 99–570, title I, § 1751(d), Oct. 27, 1986, 100 Stat. 3207–47; Pub. L. 99–603, title I, § 116, Nov. 6, 1986, 100 Stat. 3384; Pub. L. 100–525, §§ 2(e), 5, Oct. 24, 1988, 102 Stat. 2610, 2615; Pub. L. 101–649, title V, § 503(a), (b)(1), Nov. 29, 1990, 104 Stat. 5048, 5049; Pub. L. 102–232, title III, § 306(a)(3), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104–208, div. C, title I, § 133, title III, § 308(d)(4)(L), (e)(1)(M), (g)(5)(A)(i), Sept. 30, 1996, 110 Stat. 3009–563, 3009–618, 3009–619, 3009–623; Pub. L. 109–162, title VIII, § 826, Jan. 5, 2006, 119 Stat. 3065; Pub. L. 109–271, § 6(g), Aug. 12, 2006, 120 Stat. 763.)

AMENDMENTS

2006—Subsecs. (h), (i). Pub. L. 109–271 redesignated subsec. (i) as (h).

Subsec. (i). Pub. L. 109–162, which directed the amendment of this section "as amended by section 726" by adding cl. (i) at end, was executed by adding subsec. (i) at end to reflect the probable intent of Congress. Pub. L. 109–162 does not contain a section 726.

1996—Subsec. (a)(2), (4). Pub. L. 104–208, § 308(d)(4)(L)(i), substituted "expulsion, or removal" for "or expulsion".

Subsec. (c). Pub. L. 104–208, § 308(d)(4)(L)(ii), substituted "denial of admission to" for "exclusion from".

Subsec. (f)(1). Pub. L. 104–208, § 308(g)(5)(A)(i), substituted "section 1229a" for "section 1252".

Subsec. (g). Pub. L. 104–208, § 308(e)(1)(M), which directed amendment of subsec. (g) by substituting "removal" for "deportation" wherever appearing, could not be executed because the word "deportation" did not appear in subsec. (g).

Pub. L. 104–208, § 133, added subsec. (g).

1991—Subsec. (a)(4). Pub. L. 102–232 substituted a semicolon for comma at end.

1990—Subsec. (a). Pub. L. 101–649, § 503(a), struck out "and" at end of par. (3), substituted "United States, and" for "United States. Any such employee shall also have the power to execute any warrant or other process

issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.'' at end of par. (4), and added par. (5) and concluding provisions.

Subsec. (f). Pub. L. 101–649, § 503(b)(1), added subsec. (f).

1988—Subsec. (d). Pub. L. 100–525, § 5, added par. (3) and closing provisions and struck out former par. (3) which read as follows: ''requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.''

Subsec. (e). Pub. L. 100–525, § 2(e)(2), made technical amendment to directory language of Pub. L. 99–603, § 116, and redesignated the subsec. (d) added by such § 116, as (e). See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–570 added subsec. (d).

Subsec. (e). Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(e), added subsec. (e), which prior to amendment by Pub. L. 100–525, was designated as a second subsec. (d) of this section.

1976—Subsec. (b). Pub. L. 94–550 inserted ''(or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28)'' after ''to whom such oath has been administered'' and ''(or subscribe under penalty of perjury as permitted under section 1746 of title 28)'' after ''give false evidence or swear''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(L), (e)(1)(M), (g)(5)(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 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 1988 AMENDMENT

Amendment by section 2(e) of 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.

§ 1358. Local jurisdiction over immigrant stations

The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations.

(June 27, 1952, ch. 477, title II, ch. 9, § 288, 66 Stat. 234.)

§ 1359. Application to American Indians born in Canada

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

(June 27, 1952, ch. 477, title II, ch. 9, § 289, 66 Stat. 234.)

§ 1360. Establishment of central file; information from other departments and agencies

(a) Establishment of central file

There shall be established in the office of the Commissioner, for the use of security and enforcement agencies of the Government of the United States, a central index, which shall contain the names of all aliens heretofore admitted or denied admission to the United States, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted or denied admission to the United States, the names of their sponsors of record, if any, and such other relevant information as the Attorney General shall require as an aid to the proper enforcement of this chapter.

(b) Information from other departments and agencies

Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the Service upon request made by the Attorney General to the head of any such department or agency.

(c) Reports on social security account numbers and earnings of aliens not authorized to work

(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.

(d) Certification of search of Service records

A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to

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

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)(9) 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.

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.

§ 1363. Deposit of and interest on cash received to secure immigration bonds

(a) Cash received by the Attorney General as security on an immigration bond shall be deposited in the Treasury of the United States in trust for the obligor on the bond, and shall bear interest payable at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum. Such interest shall accrue from date of deposit occurring after April 27, 1966, to and including date of withdrawal or date of breach of the immigration bond, whichever occurs first: *Provided*, That cash received by the Attorney General as security on an immigration bond, and deposited by him in the postal savings system prior to discontinuance of the system, shall accrue interest as provided in this section from the date such cash ceased to accrue interest under the system. Appropriations to the Treasury Department for interest on uninvested funds shall be available for payment of said interest.

(b) The interest accruing on cash received by the Attorney General as security on an immigration bond shall be subject to the same disposition as prescribed for the principal cash, except that interest accruing to the date of breach of the immigration bond shall be paid to the obligor on the bond.

(June 27, 1952, ch. 477, title II, ch. 9, § 293, as added Pub. L. 91–313, § 2, July 10, 1970, 84 Stat. 413.)

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.

§ 1363a. Undercover investigation authority

(a) In general

With respect to any undercover investigative operation of the Service which is necessary for the detection and prosecution of crimes against the United States—

(1) sums appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(A) section 1341(a) of title 31,

(B) section 11(a) of title 41,

(C) section 255 of title 41,

(D) section 8141 of title 40,

(E) section 3324(a) and (b) of title 31,

(F) section 22 of title 41, and

(G) subsections (a) and (c)[1] of section 254 of title 41;

(2) sums appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 9102 of title 31;

(3) sums appropriated for the Service, and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and of section 3302(a) of title 31; and

(4) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302(b) of title 31.

The authority set forth in this subsection may be exercised only upon written certification of the Commissioner, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of the undercover operation.

(b) Disposition of proceeds no longer required

As soon as practicable after the proceeds from an undercover investigative operation, carried out under paragraphs (3) and (4) of subsection (a) of this section, are no longer necessary for the conduct of the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Disposition of certain corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) of this section with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner's designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) Financial audits

The Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.

(June 27, 1952, ch. 477, title II, ch. 9, § 294, as added Pub. L. 104–208, div. C, title II, § 205(a), Sept. 30, 1996, 110 Stat. 3009–567.)

REFERENCES IN TEXT

Subsection (c) of section 254 of title 41, referred to in subsec. (a)(1)(G), was repealed by Pub. L. 103–355, title II, § 2251(b), Oct. 13, 1994, 108 Stat. 3320.

[1] See References in Text note below.

CODIFICATION

In subsec. (a)(1)(A), (E), (2) to (4), ''section 1341(a) of title 31'' substituted for ''section 3679(a) of the Revised Statutes (31 U.S.C. 1341)'', ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 3324)'', ''section 9102 of title 31'' substituted for ''section 304 of the Government Corporation Control Act (31 U.S.C. 9102)'', ''section 3302(a) of title 31'' substituted for ''section 3639 of the Revised Statutes (31 U.S.C. 3302)'', and ''section 3302(b) of title 31'' substituted for ''section 3617 of the Revised Statutes (31 U.S.C. 3302)'', on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (a)(1)(D), ''section 8141 of title 40'' substituted for ''the third undesignated paragraph under the heading 'Miscellaneous' of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

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.

§ 1363b. Repealed. Pub. L. 105–277, div. A, § 101(b) [title I, § 109(b)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–67

Section, act June 27, 1952, ch. 477, title II, ch. 9, § 295, as added Pub. L. 104–208, div. C, title VI, § 626(a), Sept. 30, 1996, 110 Stat. 3009–700, related to transportation of remains of immigration officers and border patrol agents killed in the line of duty. Pub. L. 105–277, which directed the repeal of section 626 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which is section 626 of Pub. L. 104–208, div. C, title VI, Sept. 30, 1996, 110 Stat. 3009–700, was executed by repealing this section, which was section 295 of the Immigration and Nationality Act and was enacted by section 626(a) of Pub. L. 104–208, to reflect the probable intent of Congress.

§ 1364. Triennial comprehensive report on immigration

(a) Triennial report

The President shall transmit to the Congress, not later than January 1, 1989, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) Details in each report

Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 237 of the Immigration and Nationality Act [8 U.S.C. 1227]; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, the rate, size, and distribution of population growth in the United States, and the impact on specific States and local units of government of high rates of immigration resettlement.

(c) History and projections

The information (referred to in subsection (b) of this section) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) Recommendations

The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act [8 U.S.C. 1151 et seq.] bearing on the admission and entry of such aliens to the United States.

(Pub. L. 99–603, title IV, § 401, Nov. 6, 1986, 100 Stat. 3440; Pub. L. 104–208, div. C, title III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Title II of the Act is classified principally to subchapter II (§ 1151 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''section 237'' for ''section 241''.

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.

EX. ORD. NO. 12789. DELEGATION OF REPORTING FUNCTIONS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended by Ex. Ord. No. 13286, § 32, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99–603 (''Reform Act'') [title IV of Pub. L. 99–603, Nov. 6, 1986, 100 Stat. 3440, which enacted section 1364 of this title and provisions set out as notes under sections 1101, 1187, 1188, 1255a, and 1324a of this title], it is hereby ordered as follows:

SECTION 1. The Secretary of Homeland Security shall:

(a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(3)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in

the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 2. The Secretary of Labor shall: (a) perform the functions vested in the President by section 402(3)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 3. The functions delegated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A–19.

SEC. 4. This order shall be effective immediately.

GEORGE BUSH.

§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) of this section is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) of this section is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) "State" defined

The term ''State'' has the meaning given such term in section 1101(a)(36) of this title.

(Pub. L. 99–603, title V, § 501, Nov. 6, 1986, 100 Stat. 3443.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

REGULATIONS

Pub. L. 103–317, title VIII, Aug. 26, 1994, 108 Stat. 1778, provided in part: ''That the Attorney General shall promulgate regulations to (a) prescribe requirements for program participation eligibility for States, (b) require verification by States of the eligible incarcerated population data with the Immigration and Naturalization Service, (c) prescribe a formula for distributing assistance to eligible States, and (d) award assistance to eligible States''.

[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.]

§ 1365a. Integrated entry and exit data system

(a) Requirement

The Attorney General shall implement an integrated entry and exit data system.

(b) Integrated entry and exit data system defined

For purposes of this section, the term ''integrated entry and exit data system'' means an electronic system that—

(1) provides access to, and integrates, alien arrival and departure data that are—

(A) authorized or required to be created or collected under law;

(B) in an electronic format; and

(C) in a data base of the Department of Justice or the Department of State, including those created or used at ports of entry and at consular offices;

(2) uses available data described in paragraph (1) to produce a report of arriving and departing aliens by country of nationality, classification as an immigrant or nonimmigrant, and date of arrival in, and departure from, the United States;

(3) matches an alien's available arrival data with the alien's available departure data;

(4) assists the Attorney General (and the Secretary of State, to the extent necessary to carry out such Secretary's obligations under immigration law) to identify, through on-line searching procedures, lawfully admitted nonimmigrants who may have remained in the United States beyond the period authorized by the Attorney General; and

(5) otherwise uses available alien arrival and departure data described in paragraph (1) to permit the Attorney General to make the reports required under subsection (e) of this section.

(c) Construction

(1) No additional authority to impose documentary or data collection requirements

Nothing in this section shall be construed to permit the Attorney General or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section, including—

(A) requirements on any alien for whom the documentary requirements in section

1182(a)(7)(B) of this title have been waived by the Attorney General and the Secretary of State under section 1182(d)(4)(B) of this title; or

(B) requirements that are inconsistent with the North American Free Trade Agreement.

(2) No reduction of authority

Nothing in this section shall be construed to reduce or curtail any authority of the Attorney General or the Secretary of State under any other provision of law.

(d) Deadlines

(1) Airports and seaports

Not later than December 31, 2003, the Attorney General shall implement the integrated entry and exit data system using available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at an airport or seaport. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at an airport or seaport, are entered into the system and can be accessed by immigration officers at other airports and seaports.

(2) High-traffic land border ports of entry

Not later than December 31, 2004, the Attorney General shall implement the integrated entry and exit data system using the data described in paragraph (1) and available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at such a port of entry, are entered into the system and can be accessed by immigration officers at airports, seaports, and other such land border ports of entry.

(3) Remaining data

Not later than December 31, 2005, the Attorney General shall fully implement the integrated entry and exit data system using all data described in subsection (b)(1) of this section. Such implementation shall include ensuring that all such data are available to immigration officers at all ports of entry into the United States.

(e) Reports

(1) In general

Not later than December 31 of each year following the commencement of implementation of the integrated entry and exit data system, the Attorney General shall use the system to prepare an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate.

(2) Information

Each report shall include the following information with respect to the preceding fiscal year, and an analysis of that information:

(A) The number of aliens for whom departure data was collected during the reporting period, with an accounting by country of nationality of the departing alien.

(B) The number of departing aliens whose departure data was successfully matched to the alien's arrival data, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

(C) The number of aliens who arrived pursuant to a nonimmigrant visa, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure data have been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

(D) The number of lawfully admitted nonimmigrants identified as having remained in the United States beyond the period authorized by the Attorney General, with an accounting by the alien's country of nationality.

(f) Authority to provide access to system

(1) In general

Subject to subsection (d) of this section, the Attorney General, in consultation with the Secretary of State, shall determine which officers and employees of the Departments of Justice and State may enter data into, and have access to the data contained in, the integrated entry and exit data system.

(2) Other law enforcement officials

The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the integrated entry and exit data system for law enforcement purposes.

(g) Use of task force recommendations

The Attorney General shall continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established under section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2008.

(Pub. L. 104–208, div. C, title I, §110, Sept. 30, 1996, 110 Stat. 3009–558; Pub. L. 105–259, §1, Oct. 15, 1998, 112 Stat. 1918; Pub. L. 105–277, div. A, §101(b) [title I, §116], Oct. 21, 1998, 112 Stat. 2681–50, 2681–68; Pub. L. 106–215, §2(a), June 15, 2000, 114 Stat. 337.)

REFERENCES IN TEXT

Immigration law, referred to in subsec. (b)(4), is classified generally to this title. See also section 1101(a)(17) of this title.

Section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (g), is section 3 of Pub. L. 106–215, set out as a note below.

CODIFICATION

Section was formerly set out as a note under section 1221 of this title.

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2000—Pub. L. 106–215 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) SYSTEM.—Not later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney General shall develop an automated entry and exit control system that will—

''(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States;

''(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General; and

''(3) not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.

''(b) REPORT.—

''(1) DEADLINE.—Not later than December 31 of each year following the development of the system under subsection (a) of this section, the Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate on such system.

''(2) INFORMATION.—The report shall include the following information:

''(A) The number of departure records collected, with an accounting by country of nationality of the departing alien.

''(B) The number of departure records that were successfully matched to records of the alien's prior arrival in the United States, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

''(C) The number of aliens who arrived as nonimmigrants, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure record has been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

''(c) USE OF INFORMATION ON OVERSTAYS.—Information regarding aliens who have remained in the United Staty beyond their authorized period of stay identified through the system shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports of entry and at consular offices.''

1998—Subsec. (a). Pub. L. 105–277, § 116(1), in introductory provisions, substituted ''later than October 15, 1998 (and not later than March 30, 2001, in the case of land border ports of entry and sea ports), the Attorney'' for ''later than October 15, 1998, the Attorney''.

Pub. L. 105–259 in introductory provisions, substituted ''October 15, 1998'' for ''2 years after September 30, 1996''.

Subsec. (a)(3). Pub. L. 105–277, § 116(2)–(4), added par. (3).

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.

VISA INTEGRITY AND SECURITY

Pub. L. 107–56, title IV, § 414, Oct. 26, 2001, 115 Stat. 353, as amended by Pub. L. 107–173, title II, § 201(b)(2), May 14, 2002, 116 Stat. 547, provided that:

''(a) SENSE OF CONGRESS REGARDING THE NEED TO EXPEDITE IMPLEMENTATION OF INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

''(1) SENSE OF CONGRESS.—In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that—

''(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

''(B) the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215) [set out as a note below].

''(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

''(b) DEVELOPMENT OF THE SYSTEM.—In the development of the integrated entry and exit data system under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), the Attorney General and the Secretary of State shall particularly focus on—

''(1) the utilization of biometric technology; and

''(2) the development of tamper-resistant documents readable at ports of entry.

''(c) INTERFACE WITH LAW ENFORCEMENT DATABASES.—The entry and exit data system described in this section shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.''

TASK FORCE

Pub. L. 106–215, § 3, June 15, 2000, 114 Stat. 339, as amended by Pub. L. 107–56, title IV, § 415, Oct. 26, 2001, 115 Stat. 354, provided that:

''(a) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act [June 15, 2000], the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security[,] shall establish a task force to carry out the duties described in subsection (c) (in this section referred to as the 'Task Force').

''(b) MEMBERSHIP.—

''(1) CHAIRPERSON; APPOINTMENT OF MEMBERS.—The Task Force shall be composed of the Attorney General and 16 other members appointed in accordance with paragraph (2). The Attorney General shall be the chairperson and shall appoint the other members.

''(2) APPOINTMENT REQUIREMENTS.—In appointing the other members of the Task Force, the Attorney General shall include—

''(A) representatives of Federal, State, and local agencies with an interest in the duties of the Task Force, including representatives of agencies with an interest in—

''(i) immigration and naturalization;

''(ii) travel and tourism;

''(iii) transportation;

''(iv) trade;

''(v) law enforcement;

''(vi) national security; or

''(vii) the environment; and

''(B) private sector representatives of affected industries and groups.

''(3) TERMS.—Each member shall be appointed for the life of the Task Force. Any vacancy shall be filled by the Attorney General.

''(4) COMPENSATION.—

''(A) IN GENERAL.—Each member of the Task Force shall serve without compensation, and members who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(B) TRAVEL EXPENSES.—The members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Task Force.

''(c) DUTIES.—The Task Force shall evaluate the following:

''(1) How the Attorney General can efficiently and effectively carry out section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act.

''(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports of entry through—

''(A) enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act, by better use of technology, resources, and personnel;

''(B) increasing cooperation between the public and private sectors;

''(C) increasing cooperation among Federal agencies and among Federal and State agencies; and

''(D) modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures of airports, seaports, and land border ports of entry.

''(3) The cost of implementing each of its recommendations.

''(d) STAFF AND SUPPORT SERVICES.—

''(1) IN GENERAL.—The Attorney General may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Task Force to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Task Force.

''(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code. The Attorney General may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

''(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

''(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Attorney General may procure temporary and intermittent services for the Task Force under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Attorney General, the Administrator of General Services shall provide to the Task Force, on a reimbursable basis, the administrative support services necessary for the Task Force to carry out its responsibilities under this section.

''(e) HEARINGS AND SESSIONS.—The Task Force may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Task Force considers appropriate.

''(f) OBTAINING OFFICIAL DATA.—The Task Force may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Attorney General, the head of that department or agency shall furnish that information to the Task Force.

''(g) REPORTS.—

''(1) DEADLINE.—Not later than December 31, 2002, and not later than December 31 of each year thereafter in which the Task Force is in existence, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate containing the findings, conclusions, and recommendations of the Task Force. Each report shall also measure and evaluate how much progress the Task Force has made, how much work remains, how long the remaining work will take to complete, and the cost of completing the remaining work.

''(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Naturalization Service, the responsibility for preparing and transmitting any such report.

''(h) LEGISLATIVE RECOMMENDATIONS.—

''(1) IN GENERAL.—The Attorney General shall make such legislative recommendations as the Attorney General deems appropriate—

''(A) to implement the recommendations of the Task Force; and

''(B) to obtain authorization for the appropriation of funds, the expenditure of receipts, or the reprogramming of existing funds to implement such recommendations.

''(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Naturalization Service, the responsibility for preparing and transmitting any such legislative recommendations.

''(i) TERMINATION.—The Task Force shall terminate on a date designated by the Attorney General as the date on which the work of the Task Force has been completed.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.''

§ 1365b. Biometric entry and exit data system

(a) Finding

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) Definition

In this section, the term ''entry and exit data system'' means the entry and exit system required by applicable sections of—

(1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);

(2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205)[1];

(3) the Visa Waiver Permanent Program Act (Public Law 106–396);

(4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173) [8 U.S.C. 1701 et seq]; and

(5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).

(c) Plan and report

(1) Development of plan

The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) Report

Not later than 180 days after December 17, 2004, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security's US-VISIT program—

(i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and

(ii) fulfills the statutory obligations under subsection (b) of this section.

(d) Collection of biometric exit data

The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

(e) Integration and interoperability

(1) Integration of data system

Not later than 2 years after December 17, 2004, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

(A) the Department of Homeland Security, at—

(i) the United States Immigration and Customs Enforcement;

(ii) the United States Customs and Border Protection; and

(iii) the United States Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) Interoperable component

The fully integrated data system under paragraph (1) shall be an interoperable component of the entry and exit data system.

(3) Interoperable data system

Not later than 2 years after December 17, 2004, the Secretary shall fully implement an interoperable electronic data system, as required by section 202 of the Enhanced Border Security and Visa Entry Reform Act[2] (8 U.S.C. 1722) to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

[1] So in original. Probably should be ''(Public Law 106–215)''.

[2] So in original. Probably should be followed by ''of 2002''.

(f) Maintaining accuracy and integrity of entry and exit data system

(1) Policies and procedures

(A) Establishment

The Secretary of Homeland Security shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system that ensure the accuracy and integrity of the data.

(B) Training

The Secretary shall develop training on the rules, guidelines, policies, and procedures established under subparagraph (A), and on immigration law and procedure. All personnel authorized to access information maintained in the databases and data system shall receive such training.

(2) Data collected from foreign nationals

The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals, and the procedures utilized to collect such data, to ensure that the information is consistent and valuable to officials accessing that data across multiple agencies.

(3) Data maintenance procedures

Heads of agencies that have databases or data systems linked to the entry and exit data system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data and for limiting access to the information in the databases or data systems to authorized personnel.

(4) Requirements

The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors in a timely and effective manner;

(ii) determining which government officer provided data so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors;

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems;

(C) strictly limit the agency personnel authorized to enter data into the system;

(D) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(E) identify classes of prejudicial information requiring additional authority of supervisory personnel before entry.

(5) Centralizing and streamlining correction process

(A) In general

The President, or agency director designated by the President, shall establish a clearinghouse bureau in the Department of Homeland Security, to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate information contained in agency databases, which is related to immigration status, or which otherwise impedes lawful admission to the United States.

(B) Time schedules

The process described in subparagraph (A) shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(g) Integrated biometric entry-exit screening system

The biometric entry and exit data system shall facilitate efficient immigration benefits processing by—

(1) ensuring that the system's tracking capabilities encompass data related to all immigration benefits processing, including—

(A) visa applications with the Department of State;

(B) immigration related filings with the Department of Labor;

(C) cases pending before the Executive Office for Immigration Review; and

(D) matters pending or under investigation before the Department of Homeland Security;

(2) utilizing a biometric based identity number tied to an applicant's biometric algorithm established under the entry and exit data system to track all immigration related matters concerning the applicant;

(3) providing that—

(A) all information about an applicant's immigration related history, including entry and exit history, can be queried through electronic means; and

(B) database access and usage guidelines include stringent safeguards to prevent misuse of data;

(4) providing real-time updates to the information described in paragraph (3)(A), including pertinent data from all agencies referred to in paragraph (1); and

(5) providing continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(h) Entry-exit system goals

The Department of Homeland Security shall operate the biometric entry and exit system so that it—

(1) serves as a vital counterterrorism tool;

(2) screens travelers efficiently and in a welcoming manner;

(3) provides inspectors and related personnel with adequate real-time information;

(4) ensures flexibility of training and security protocols to most effectively comply with security mandates;

(5) integrates relevant databases and plans for database modifications to address volume increase and database usage; and

(6) improves database search capacities by utilizing language algorithms to detect alternate names.

(i) Dedicated specialists and front line personnel training

In implementing the provisions of subsections (g) and (h) of this section, the Department of Homeland Security and the Department of State shall—

(1) develop cross-training programs that focus on the scope and procedures of the entry and exit data system;

(2) provide extensive community outreach and education on the entry and exit data system's procedures;

(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and

(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(j) Compliance status reports

Not later than 1 year after December 17, 2004, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency subject to the requirements of this section, shall issue individual status reports and a joint status report detailing the compliance of the department or agency with each requirement under this section.

(k) Expediting registered travelers across international borders

(1) Findings

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) Expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority.

(B) The process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) Definition

In this subsection, the term ''registered traveler program'' means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) International registered traveler program

(A) In general

The Secretary of Homeland Security shall establish an international registered traveler program that incorporates available technologies, such as biometrics and e-passports, and security threat assessments to expedite the screening and processing of international travelers, including United States Citizens and residents, who enter and exit the United States. The program shall be coordinated with the United States Visitor and Immigrant Status Indicator Technology program, other pre-screening initiatives, and the Visa Waiver Program.

(B) Fees

The Secretary may impose a fee for the program established under subparagraph (A) and may modify such fee from time to time. The fee may not exceed the aggregate costs associated with the program and shall be credited to the Department of Homeland Security for purposes of carrying out the program. Amounts so credited shall remain available until expended.

(C) Rulemaking

Within 365 days after December 26, 2007, the Secretary shall initiate a rulemaking to establish the program, criteria for participation, and the fee for the program.

(D) Implementation

Not later than 2 years after December 26, 2007, the Secretary shall establish a phased-implementation of a biometric-based international registered traveler program in conjunction with the United States Visitor and Immigrant Status Indicator Technology entry and exit system, other pre-screening initiatives, and the Visa Waiver Program at United States airports with the highest volume of international travelers.

(E) Participation

The Secretary shall ensure that the international registered traveler program includes as many participants as practicable by—

(i) establishing a reasonable cost of enrollment;

(ii) making program enrollment convenient and easily accessible; and

(iii) providing applicants with clear and consistent eligibility guidelines.

(4) Report

Not later than 1 year after December 17, 2004, the Secretary shall submit to Congress a report describing the Department's progress on the development and implementation of the registered traveler program.

(*l*) Authorization of appropriations

There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 108–458, title VII, § 7208, Dec. 17, 2004, 118 Stat. 3817; Pub. L. 110–161, div. E, title V, § 565, Dec. 26, 2007, 121 Stat. 2091.)

REFERENCES IN TEXT

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (b)(1), is div. C of Pub. L. 104–208, Sept. 30, 1996, 110 Stat. 3009–546. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1101 of this title and Tables.

The Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in

subsec. (b)(2), is Pub. L. 106–215, June 15, 2000, 114 Stat. 337, which amended section 1365a of this title and enacted provisions set out as notes under sections 1101 and 1365a of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1101 of this title and Tables.

The Visa Waiver Permanent Program Act, referred to in subsec. (b)(3), is Pub. L. 106–396, Oct. 30, 2000, 114 Stat. 1637. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1101 of this title and Tables.

The Enhanced Border Security and Visa Entry Reform Act of 2002, referred to in subsec. (b)(4), is Pub. L. 107–173, May 14, 2002, 116 Stat. 543, as amended, which is classified principally to chapter 15 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, referred to in subsec. (b)(5), was Pub. L. 107–56, Oct. 26, 2001, 115 Stat. 272. Pub. L. 107–56 was renamed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act by Pub. L. 109–177, title I, § 101(b), Mar. 9, 2006, 120 Stat. 194. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

December 26, 2007, referred to in subsec. (k)(3)(C), (D), was in the original ''the date of enactment of this paragraph'' and was translated a meaning the date of enactment of Pub. L. 110–161, which amended subsec. (k)(3) of this section generally, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2007—Subsec. (k)(3). Pub. L. 110–161 amended heading and text of par. (3) generally. Prior to amendment, text related to development and implementation of a registered traveler program.

§ 1366. Annual report on criminal aliens

Not later than 12 months after September 30, 1996, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report detailing—

(1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense;

(2) the number of illegal aliens convicted of felonies in any Federal or State court, but not sentenced to incarceration, in the year before the report was submitted, stating the number convicted for each type of offense;

(3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal; and

(4) methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.

(Pub. L. 104–208, div. C, title III, § 332, Sept. 30, 1996, 110 Stat. 3009–634.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1367. Penalties for disclosure of information

(a) In general

Except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,

(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity,[1]

(F) in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)), under section 7105(b)(1)(E)(i)(II)(bb) of title 22, under section 244(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(a)(3)), as in effect prior to March 31, 1999, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (8

[1] So in original. Probably should be followed by ''or''.

U.S.C. 1101(a)(51))[2], the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2)]; or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions

(1) The Attorney General may provide, in the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) Subsection (a) of this section shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) of this section shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) Subsection (a) of this section may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(7) Government entities adjudicating applications for relief under subsection (a)(2) of this section, and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(i)(1)], may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(c) Penalties for violations

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.

(d) Guidance

The Attorney General and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

(Pub. L. 104–208, div. C, title III, §§308(g)(8)(D), 384, Sept. 30, 1996, 110 Stat. 3009–624, 3009–652; Pub. L. 105–33, title V, §5572(b), Aug. 5, 1997, 111 Stat. 641; Pub. L. 106–386, div. B, title V, §1513(d), Oct. 28, 2000, 114 Stat. 1536; Pub. L. 109–162, title VIII, §817, Jan. 5, 2006, 119 Stat. 3060; Pub. L. 109–271, §6(h), Aug. 12, 2006, 120 Stat. 763.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 384 of div. C of Pub. L. 104–208. Another subsec. (d) of section 384 of div. C of Pub. L. 104–208 amended sections 1160 and 1255a of this title and enacted provisions set out as a note under section 1160 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–162, §817(1)(A), substituted ", the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)" for "(including any bureau or agency of such Department)" in introductory provisions.

Subsec. (a)(1)(F). Pub. L. 109–162, §817(1)(B), added subpar. (F).

Subsec. (a)(2). Pub. L. 109–271 substituted "paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigra-

[2] So in original. Probably should be followed by a closing parenthesis.

tion and Nationality Act or section 240A(b)(2) of such Act'' for ''clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty''.

Subsec. (b)(6), (7). Pub. L. 109–162, § 817(2), added pars. (6) and (7).

Subsec. (c). Pub. L. 109–162, § 817(3), inserted ''or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act'' after ''in violation of this section''.

Subsec. (d). Pub. L. 109–162, § 817(4), added subsec. (d).

2000—Subsec. (a)(1)(E). Pub. L. 106–386, § 1513(d)(1)–(3), added subpar. (E).

Subsec. (a)(2). Pub. L. 106–386, § 1513(d)(4), inserted ''section 101(a)(15)(U),'' after ''section 216(c)(4)(C),''.

1997—Subsec. (b)(5). Pub. L. 105–33 added par. (5).

1996—Subsec. (a)(2). Pub. L. 104–208, § 308(g)(8)(D), which directed amendment of section 364(a)(2) of div. C of Pub. L. 104–208 by substituting ''240A(a)(3)'' for ''244(a)(3)'', was executed by making the substitution in subsec. (a)(2) of this section to reflect the probable intent of Congress. Div. C of Pub. L. 104–208 does not contain a section 364.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5582 of title V of Pub. L. 105–33 provided that: ''Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§ 5561–5582) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1611 to 1613, 1621, 1622, 1631, 1632, 1641 to 1643, and 1645 of this title, and sections 608, 1383, and 1437y of Title 42, The Public Health and Welfare] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(D) 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.

§ 1368. Increase in INS detention facilities; report on detention space

(a) Increase in detention facilities

Subject to the availability of appropriations, the Attorney General shall provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.

(b) Report on detention space

(1) In general

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 1226(c) of this title and section 1231(a) of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 1228 of this title or section 1225(b)(2)(A) or 1229a of this title; and

(C) other inadmissible or deportable aliens in accordance with the priorities established by the Attorney General.

(2) Estimate of number of aliens released into the community

(A) Criminal aliens

(i) In general

The first report submitted under paragraph (1) shall include an estimate of the number of criminal aliens who, in each of the 3 fiscal years concluded prior to the date of the report—

(I) were released from detention facilities of the Immigration and Naturalization Service (whether operated directly by the Service or through contract with other persons or agencies); or

(II) were not taken into custody or detention by the Service upon completion of their incarceration.

(ii) Aliens convicted of aggravated felonies

The estimate under clause (i) shall estimate separately, with respect to each year described in such clause, the number of criminal aliens described in such clause who were convicted of an aggravated felony.

(B) All inadmissible or deportable aliens

The first report submitted under paragraph (1) shall also estimate the number of inadmissible or deportable aliens who were released into the community due to a lack of detention facilities in each of the 3 fiscal years concluded prior to the date of the report notwithstanding circumstances that the Attorney General believed justified detention (for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings).

(C) Subsequent reports

Each report under paragraph (1) following the first such report shall include the estimates under subparagraphs (A) and (B), made with respect to the 6-month period immediately preceding the date of the submission of the report.

(Pub. L. 104–208, div. C, title III, §§ 308(g)(10)(G), 386, Sept. 30, 1996, 110 Stat. 3009–625, 3009–653.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208, § 308(g)(10)(G), substituted ''inadmissible'' for ''excludable'' in pars. (1)(B), (C) and (2)(B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(10)(G) 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.

§ 1369. Treatment of expenses subject to emergency medical services exception

(a) In general

Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d) of this section) through a public hospital or other public facility (including a nonprofit hospital that is eligible for an additional payment adjustment under section 1395ww of title 42) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

(b) Confirmation of immigration status required

No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(c) Administration

This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

(d) "Emergency medical condition" defined

For purposes of this section, the term ''emergency medical condition'' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(1) placing the patient's health in serious jeopardy,

(2) serious impairment to bodily functions, or

(3) serious dysfunction of any bodily organ or part.

(e) Effective date

Subsection (a) of this section shall apply to medical assistance for care and treatment of an emergency medical condition furnished on or after January 1, 1997.

(Pub. L. 104–208, div. C, title V, § 562, Sept. 30, 1996, 110 Stat. 3009–682.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1370. Reimbursement of States and localities for emergency ambulance services

Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who—

(1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and

(2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.

(Pub. L. 104–208, div. C, title V, § 563, Sept. 30, 1996, 110 Stat. 3009–683.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1371. Reports

Not later than 180 days after the end of each fiscal year, the Attorney General shall submit a report to the Inspector General of the Department of Justice and the Committees on the Judiciary of the House of Representatives and of the Senate describing the following:

(1) Public charge deportations

The number of aliens deported on public charge grounds under section 1227(a)(5)[1] of this title during the previous fiscal year.

(2) Indigent sponsors

The number of determinations made under section 1631(e) of this title during the previous fiscal year.

(3) Reimbursement actions

The number of actions brought, and the amount of each action, for reimbursement under section 1183a of this title (including private collections) for the costs of providing public benefits.

(Pub. L. 104–208, div. C, title V, § 565, Sept. 30, 1996, 110 Stat. 3009–684.)

REFERENCES IN TEXT

Section 1227(a)(5) of this title, referred to in par. (1), was in the original a reference to ''section 241(a)(5) of

[1] See References in Text note below.

the Immigration and Nationality Act'', which has been translated as referring to section 237(a)(5) of the Immigration and Nationality Act to reflect the probable intent of Congress and the renumbering of section 241 as 237 by Pub. L. 104–208, div. C, title III, § 305(a)(2), Sept. 30, 1996, 110 Stat. 3009–598. Pub. L. 104–208, § 305(a)(3), enacted a new section 241 of the Immigration and Nationality Act which is classified to section 1231 of this title, but subsec. (a)(5) of that section does not relate to deportation on public charge grounds.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1372. Program to collect information relating to nonimmigrant foreign students and other exchange program participants

(a) In general

(1) Program

The Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall develop and conduct a program to collect from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States the information described in subsection (c) of this section with respect to aliens who—

(A) have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title; and

(B) are nationals of the countries designated under subsection (b) of this section.

(2) Deadline

The program shall commence not later than January 1, 1998.

(3) Aliens for whom a visa is required

The Attorney General, in consultation with the Secretary of State, shall establish an electronic means to monitor and verify—

(A) the issuance of documentation of acceptance of a foreign student by an approved institution of higher education or other approved educational institution, or of an exchange visitor program participant by a designated exchange visitor program;

(B) the transmittal of the documentation referred to in subparagraph (A) to the Department of State for use by the Bureau of Consular Affairs;

(C) the issuance of a visa to a foreign student or an exchange visitor program participant;

(D) the admission into the United States of the foreign student or exchange visitor program participant;

(E) the notification to an approved institution of higher education, other approved educational institution, or exchange visitor program sponsor that the foreign student or exchange visitor participant has been admitted into the United States;

(F) the registration and enrollment of that foreign student in such approved institution of higher education or other approved educational institution, or the participation of that exchange visitor in such designated exchange visitor program, as the case may be; and

(G) any other relevant act by the foreign student or exchange visitor program participant, including a changing of school or designated exchange visitor program and any termination of studies or participation in a designated exchange visitor program.

(4) Reporting requirements

Not later than 30 days after the deadline for registering for classes for an academic term of an approved institution of higher education or other approved educational institution for which documentation is issued for an alien as described in paragraph (3)(A), or the scheduled commencement of participation by an alien in a designated exchange visitor program, as the case may be, the institution or program, respectively, shall report to the Immigration and Naturalization Service any failure of the alien to enroll or to commence participation.

(b) Covered countries

The Attorney General, in consultation with the Secretary of State, shall designate countries for purposes of subsection (a)(1)(B) of this section. The Attorney General shall initially designate not less than 5 countries and may designate additional countries at any time while the program is being conducted.

(c) Information to be collected

(1) In general

The information for collection under subsection (a) of this section with respect to an alien consists of—

(A) the identity and current address in the United States of the alien;

(B) the nonimmigrant classification of the alien and the date on which a visa under the classification was issued or extended or the date on which a change to such classification was approved by the Attorney General;

(C) in the case of a student at an approved institution of higher education, or other approved educational institution,,[1] the current academic status of the alien, including whether the alien is maintaining status as a full-time student or, in the case of a participant in a designated exchange visitor program, whether the alien is satisfying the terms and conditions of such program;

(D) in the case of a student at an approved institution of higher education, or other approved educational institution,,[1] any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime or, in the case of a participant in a designated exchange visitor program, any change in the alien's participation as a result of the alien's being convicted of a crime; and[2]

[1] So in original.

[2] So in original. The word ''and'' probably should not appear.

(E) the date of entry and port of entry;

(F) the date of the alien's enrollment in an approved institution of higher education, other approved educational institution, or designated exchange visitor program in the United States;

(G) the degree program, if applicable, and field of study; and

(H) the date of the alien's termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to reenroll).

(2) FERPA

The Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g] shall not apply to aliens described in subsection (a) of this section to the extent that the Attorney General determines necessary to carry out the program under subsection (a) of this section.

(3) Electronic collection

The information described in paragraph (1) shall be collected electronically, where practicable.

(4) Computer software

(A) Collecting institutions

To the extent practicable, the Attorney General shall design the program in a manner that permits approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs to use existing software for the collection, storage, and data processing of information described in paragraph (1).

(B) Attorney General

To the extent practicable, the Attorney General shall use or enhance existing software for the collection, storage, and data processing of information described in paragraph (1).

(5) Reporting requirements

The Attorney General shall prescribe by regulation reporting requirements by taking into account the curriculum calendar of the approved institution of higher education, other approved educational institution, or exchange visitor program.

(d) Participation by institutions of higher education and exchange visitor programs

(1) Condition

The information described in subsection (c) of this section shall be provided by institutions of higher education, other approved educational institutions, or exchange visitor programs as a condition of—

(A) in the case of an approved institution of higher education, or other approved educational institution,,[1] the continued approval of the institution under subparagraph (F) or (M) of section 1101(a)(15) of this title; and

(B) in the case of an approved institution of higher education or a designated exchange visitor program, the granting of authority to issue documents to an alien demonstrating the alien's eligibility for a visa under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Effect of failure to provide information

If an approved institution of higher education, other approved educational institution, or a designated exchange visitor program fails to provide the specified information, such approvals and such issuance of visas shall be revoked or denied.

(e) Funding

(1) In general

Beginning on April 1, 1997, the Attorney General shall impose on, and collect from, each alien described in paragraph (3), with respect to whom the institution or program is required by subsection (a) of this section to collect information, a fee established by the Attorney General under paragraph (4) at a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Remittance

The fees collected under paragraph (1) shall be remitted by the alien pursuant to a schedule established by the Attorney General for immediate deposit and availability as described under section 1356(m) of this title.

(3) Aliens described

An alien referred to in paragraph (1) is an alien who seeks nonimmigrant status under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title (other than a nonimmigrant under section 1101(a)(15)(J) of this title who seeks to come to the United States as a participant in a program sponsored by the Federal Government).

(4) Amount and use of fees

(A) Establishment of amount

The Attorney General shall establish the amount of the fee to be imposed on, and collected from, an alien under paragraph (1). Except as provided in subsection (g)(2) of this section, the fee imposed on any individual may not exceed $100, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $35.[3] The amount of the fee shall be based on the Attorney General's estimate of the cost per alien of conducting the information collection program described in this section.

(B) Use

Fees collected under paragraph (1) shall be deposited as offsetting receipts into the Immigration Examinations Fee Account (established under section 1356(m) of this title) and shall remain available until expended

[3] So in original. See 2000 amendment notes below.

for the Attorney General to reimburse any appropriation the amount paid out of which is for expenses in carrying out this section. Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.

(5) Proof of payment

The alien shall present proof of payment of the fee before the granting of—

(A) a visa under section 1202 of this title or, in the case of an alien who is exempt from the visa requirement described in section 1182(d)(4) of this title, admission to the United States; or

(B) change of nonimmigrant classification under section 1258 of this title to a classification described in paragraph (3).

(6) Implementation

The provisions of section 553 of title 5 (relating to rule-making) shall not apply to the extent the Attorney General determines necessary to ensure the expeditious, initial implementation of this section.

(f) Joint report

Not later than 4 years after the commencement of the program established under subsection (a) of this section, the Attorney General, the Secretary of State, and the Secretary of Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) Worldwide applicability of program

(1) Expansion of program

Not later than 12 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(2) Revision of fee

After the program has been expanded, as provided in paragraph (1), the Attorney General may, on a periodic basis, revise the amount of the fee imposed and collected under subsection (e) of this section in order to take into account changes in the cost of carrying out the program.

(h) Definitions

As used in this section:

(1) Approved institution of higher education

The term ''approved institution of higher education'' means a college or university approved by the Attorney General, in consultation with the Secretary of Education, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Designated exchange visitor program

The term ''designated exchange visitor program'' means a program that has been—

(A) designated by the Secretary of State for purposes of section 1101(a)(15)(J) of this title; and

(B) selected by the Attorney General for purposes of the program under this section.

(3) Other approved educational institution

The term ''other approved educational institution'' includes any air flight school, language training school, or vocational school, approved by the Attorney General, in consultation with the Secretary of Education and the Secretary of State, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(Pub. L. 104–208, div. C, title VI, § 641, Sept. 30, 1996, 110 Stat. 3009–704; Pub. L. 106–396, title IV, §§ 404–406, Oct. 30, 2000, 114 Stat. 1649, 1650; Pub. L. 106–553, § 1(a)(2) [title I, § 110], Dec. 21, 2000, 114 Stat. 2762, 2762A–68; Pub. L. 107–56, title IV, § 416(c), Oct. 26, 2001, 115 Stat. 354; Pub. L. 107–173, title V, § 501(a), May 14, 2002, 116 Stat. 560.)

REFERENCES IN TEXT

The Family Educational Rights and Privacy Act of 1974, referred to in subsec. (c)(2), is section 513 of Pub. L. 93–380, title V, Aug. 21, 1974, 88 Stat. 571, which enacted section 1232g of Title 20, Education, and provisions set out as notes under sections 1221 and 1232g of Title 20. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1221 of Title 20 and Tables.

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2002—Subsec. (a)(3), (4). Pub. L. 107–173, § 501(a)(1), added pars. (3) and (4).

Subsec. (c)(1)(E) to (H). Pub. L. 107–173, § 501(a)(2), added subpars. (E) to (H).

Subsec. (c)(5). Pub. L. 107–173, § 501(a)(3), added par. (5).

2001—Subsec. (a)(1). Pub. L. 107–56, § 416(c)(1), inserted '', other approved educational institutions,'' after ''higher education'' in introductory provisions.

Subsec. (c)(1)(C), (D). Pub. L. 107–56, § 416(c)(2), inserted '', or other approved educational institution,'' after ''higher education''.

Subsec. (c)(4)(A). Pub. L. 107–56, § 416(c)(1), inserted '', other approved educational institutions,'' after ''higher education''.

Subsec. (d)(1). Pub. L. 107–56, § 416(c)(1), inserted '', other approved educational institutions,'' after ''higher education'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 107–56, § 416(c)(2), inserted '', or other approved educational institution,'' after ''higher education''.

Subsec. (d)(2). Pub. L. 107–56, § 416(c)(3), inserted '', other approved educational institution,'' after ''higher education''.

Subsec. (e)(1), (2). Pub. L. 107–56, § 416(c)(3), which directed insertion of '', other approved educational institution,'' after ''higher education'' in pars. (1) and (2), could not be executed because the words ''higher education'' did not appear. See 2000 Amendment notes below.

Subsec. (h)(3). Pub. L. 107–56, § 416(c)(4), added par. (3).

2000—Subsec. (d)(1). Pub. L. 106–396, § 406(2), inserted ''institutions of higher education or exchange visitor programs'' after ''by'' in introductory provisions.

Subsec. (e)(1). Pub. L. 106–396, § 404(1), in introductory provisions, substituted ''the Attorney General'' for ''an approved institution of higher education and a des-

ignated exchange visitor program'' and ''a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.'' for ''the time—

''(A) when the alien first registers with the institution or program after entering the United States; or

''(B) in a case where a registration under subparagraph (A) does not exist, when the alien first commences activities in the United States with the institution or program.''

Subsec. (e)(2). Pub. L. 106–396, § 404(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''An approved institution of higher education and a designated exchange visitor program shall remit the fees collected under paragraph (1) to the Attorney General pursuant to a schedule established by the Attorney General.''

Subsec. (e)(3). Pub. L. 106–396, § 404(3), substituted ''alien who seeks'' for ''alien who has'' and ''who seeks to come'' for ''who has come''.

Subsec. (e)(4)(A). Pub. L. 106–553 inserted before period at end of second sentence '', except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $35'' without reference to amendment made by Pub. L. 106–396, § 404(4)(A). See below.

Pub. L. 106–396, § 404(4)(A), inserted before period at end of second sentence '', except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40''. See amendment note above.

Subsec. (e)(4)(B). Pub. L. 106–396, § 404(4)(B), inserted at end ''Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.''

Subsec. (e)(5), (6). Pub. L. 106–396, § 404(5), added pars. (5) and (6).

Subsec. (g)(1). Pub. L. 106–396, § 405, amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

''(B) DEADLINE.—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f) of this section.''

Subsec. (h)(2)(A). Pub. L. 106–396, § 406(1), substituted ''Secretary of State'' for ''Director of the United States Information Agency''.

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.

FOREIGN STUDENT MONITORING PROGRAM

Pub. L. 107–56, title IV, § 416(a), (b), Oct. 26, 2001, 115 Stat. 354, provided that:

''(a) FULL IMPLEMENTATION AND EXPANSION OF FOREIGN STUDENT VISA MONITORING PROGRAM REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

''(b) INTEGRATION WITH PORT OF ENTRY INFORMATION.—For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.''

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104–208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009–707.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1374. Information regarding female genital mutilation

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female

genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) "Female genital mutilation" defined

For purposes of this section, the term ''female genital mutilation'' means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

(Pub. L. 104–208, div. C, title VI, § 644, Sept. 30, 1996, 110 Stat. 3009–708.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1375. Repealed. Pub. L. 109–162, title VIII, § 833(g), Jan. 5, 2006, 119 Stat. 3077

Section, Pub. L. 104–208, div. C, title VI, § 652, Sept. 30, 1996, 110 Stat. 3009–712, related to mail-order bride business.

§ 1375a. Domestic violence information and resources for immigrants and regulation of international marriage brokers

(a) Information for K nonimmigrants on legal rights and resources for immigrant victims of domestic violence

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop an information pamphlet, as described in paragraph (2), on legal rights and resources for immigrant victims of domestic violence and distribute and make such pamphlet available as described in paragraph (5). In preparing such materials, the Secretary of Homeland Security shall consult with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.

(2) Information pamphlet

The information pamphlet developed under paragraph (1) shall include information on the following:

(A) The K nonimmigrant visa application process and the marriage-based immigration process, including conditional residence and adjustment of status.

(B) The illegality of domestic violence, sexual assault, and child abuse in the United States and the dynamics of domestic violence.

(C) Domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(D) The legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters, including access to protection orders.

(E) The obligations of parents to provide child support for children.

(F) Marriage fraud under United States immigration laws and the penalties for committing such fraud.

(G) A warning concerning the potential use of K nonimmigrant visas by United States citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes and an explanation that such acts may not have resulted in a criminal record for such a citizen.

(H) Notification of the requirement under subsection (d)(3)(A) of this section that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of Federal and State sex offender public registries and collected from United States clients regarding their marital history and domestic violence or other violent criminal history, but that such information may not be complete or accurate because the United States client may not have a criminal record or may not have truthfully reported their marital or criminal record.

(3) Summaries

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop summaries of the pamphlet developed under paragraph (1) that shall be used by Federal officials when reviewing the pamphlet in interviews under subsection (b) of this section.

(4) Translation

(A) In general

In order to best serve the language groups having the greatest concentration of K nonimmigrant visa applicants, the information pamphlet developed under paragraph (1) shall, subject to subparagraph (B), be translated by the Secretary of State into foreign languages, including Russian, Spanish, Tagalog, Vietnamese, Chinese, Ukrainian, Thai, Korean, Polish, Japanese, French, Arabic, Portuguese, Hindi, and such other languages as the Secretary of State, in the Secretary's discretion, may specify.

(B) Revision

Every 2 years, the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall determine at least 14 specific languages into which the information pamphlet is translated based on the languages spoken by the greatest concentrations of K nonimmigrant visa applicants.

(5) Availability and distribution

The information pamphlet developed under paragraph (1) shall be made available and distributed as follows:

(A) Mailings to K nonimmigrant visa applicants

(i) The pamphlet shall be mailed by the Secretary of State to each applicant for a K nonimmigrant visa at the same time that the instruction packet regarding the visa application process is mailed to such applicant. The pamphlet so mailed shall be in the primary language of the applicant or in English if no translation into the applicant's primary language is available.

(ii) The Secretary of Homeland Security shall provide to the Secretary of State, for inclusion in the mailing under clause (i), a copy of the petition submitted by the petitioner for such applicant under subsection (d) or (r) of section 1184 of this title.

(iii) The Secretary of Homeland Security shall provide to the Secretary of State any criminal background information the Secretary of Homeland Security possesses with respect to a petitioner under subsection (d) or (r) of section 1184 of this title. The Secretary of State, in turn, shall share any such criminal background information that is in government records or databases with the K nonimmigrant visa applicant who is the beneficiary of the petition. The visa applicant shall be informed that such criminal background information is based on available records and may not be complete. The Secretary of State also shall provide for the disclosure of such criminal background information to the visa applicant at the consular interview in the primary language of the visa applicant. Nothing in this clause shall be construed to authorize the Secretary of Homeland Security to conduct any new or additional criminal background check that is not otherwise conducted in the course of adjudicating such petitions.

(B) Consular access

The pamphlet developed under paragraph (1) shall be made available to the public at all consular posts. The summaries described in paragraph (3) shall be made available to foreign service officers at all consular posts.

(C) Posting on Federal websites

The pamphlet developed under paragraph (1) shall be posted on the websites of the Department of State and the Department of Homeland Security, as well as on the websites of all consular posts processing applications for K nonimmigrant visas.

(D) International marriage brokers and victim advocacy organizations

The pamphlet developed under paragraph (1) shall be made available to any international marriage broker, government agency, or nongovernmental advocacy organization.

(6) Deadline for pamphlet development and distribution

The pamphlet developed under paragraph (1) shall be distributed and made available (including in the languages specified under paragraph (4)) not later than 120 days after January 5, 2006.

(b) Visa and adjustment interviews

(1) Fiancé(e)s, spouses and their derivatives

During an interview with an applicant for a K nonimmigrant visa, a consular officers shall—

(A) provide information, in the primary language of the visa applicant, on protection orders or criminal convictions collected under subsection (a)(5)(A)(iii) of this section;

(B) provide a copy of the pamphlet developed under subsection (a)(1) of this section in English or another appropriate language and provide an oral summary, in the primary language of the visa applicant, of that pamphlet; and

(C) ask the applicant, in the primary language of the applicant, whether an international marriage broker has facilitated the relationship between the applicant and the United States petitioner, and, if so, obtain the identity of the international marriage broker from the applicant and confirm that the international marriage broker provided to the applicant the information and materials required under subsection (d)(3)(A)(iii) of this section.

(2) Family-based applicants

The pamphlet developed under subsection (a)(1) of this section shall be distributed directly to applicants for family-based immigration petitions at all consular and adjustment interviews for such visas. The Department of State or Department of Homeland Security officer conducting the interview shall review the summary of the pamphlet with the applicant orally in the applicant's primary language, in addition to distributing the pamphlet to the applicant in English or another appropriate language.

(c) Confidentiality

In fulfilling the requirements of this section, no official of the Department of State or the Department of Homeland Security shall disclose to a nonimmigrant visa applicant the name or contact information of any person who was granted a protection order or restraining order against the petitioner or who was a victim of a crime of violence perpetrated by the petitioner, but shall disclose the relationship of the person to the petitioner.

(d) Regulation of international marriage brokers

(1) Prohibition on marketing children

An international marriage broker shall not provide any individual or entity with the per-

sonal contact information, photograph, or general information about the background or interests of any individual under the age of 18.

(2) Requirements of international marriage brokers with respect to mandatory collection of background information

(A) In general

(i) Search of sex offender public registries

Each international marriage broker shall search the National Sex Offender Public Registry or State sex offender public registry, as required under paragraph (3)(A)(i).

(ii) Collection of background information

Each international marriage broker shall also collect the background information listed in subparagraph (B) about the United States client to whom the personal contact information of a foreign national client would be provided.

(B) Background information

The international marriage broker shall collect a certification signed (in written, electronic, or other form) by the United States client accompanied by documentation or an attestation of the following background information about the United States client:

(i) Any temporary or permanent civil protection order or restraining order issued against the United States client.

(ii) Any Federal, State, or local arrest or conviction of the United States client for homicide, murder, manslaughter, assault, battery, domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or stalking.

(iii) Any Federal, State, or local arrest or conviction of the United States client for—

(I) solely, principally, or incidentally engaging in prostitution;

(II) a direct or indirect attempt to procure prostitutes or persons for the purpose of prostitution; or

(III) receiving, in whole or in part, of the proceeds of prostitution.

(iv) Any Federal, State, or local arrest or conviction of the United States client for offenses related to controlled substances or alcohol.

(v) Marital history of the United States client, including whether the client is currently married, whether the client has previously been married and how many times, how previous marriages of the client were terminated and the date of termination, and whether the client has previously sponsored an alien to whom the client was engaged or married.

(vi) The ages of any of the United States client's children who are under the age of 18.

(vii) All States and countries in which the United States client has resided since the client was 18 years of age.

(3) Obligation of international marriage brokers with respect to informed consent

(A) Limitation on sharing information about foreign national clients

An international marriage broker shall not provide any United States client or representative with the personal contact information of any foreign national client unless and until the international marriage broker has—

(i) performed a search of the National Sex Offender Public Registry, or of the relevant State sex offender public registry for any State not yet participating in the National Sex Offender Public Registry in which the United States client has resided during the previous 20 years, for information regarding the United States client;

(ii) collected background information about the United States client required under paragraph (2);

(iii) provided to the foreign national client—

(I) in the foreign national client's primary language, a copy of any records retrieved from the search required under paragraph (2)(A)(i) or documentation confirming that such search retrieved no records;

(II) in the foreign national client's primary language, a copy of the background information collected by the international marriage broker under paragraph (2)(B); and

(III) in the foreign national client's primary language (or in English or other appropriate language if there is no translation available into the client's primary language), the pamphlet developed under subsection (a)(1) of this section; and

(iv) received from the foreign national client a signed, written consent, in the foreign national client's primary language, to release the foreign national client's personal contact information to the specific United States client.

(B) Confidentiality

In fulfilling the requirements of this paragraph, an international marriage broker shall disclose the relationship of the United States client to individuals who were issued a protection order or restraining order as described in clause (i) of paragraph (2)(B), or of any other victims of crimes as described in clauses (ii) through (iv) of such paragraph, but shall not disclose the name or location information of such individuals.

(C) Penalty for misuse of information

A person who knowingly discloses, uses, or causes to be used any information obtained by an international marriage broker as a result of the obligations imposed on it under paragraph (2) and this paragraph for any purpose other than the disclosures required under this paragraph shall be fined in accordance with title 18 or imprisoned not more than 1 year, or both. These penalties are in addition to any other civil or criminal liability under Federal or State law which a

person may be subject to for the misuse of that information, including to threaten, intimidate, or harass any individual. Nothing in this section shall prevent the disclosure of such information to law enforcement or pursuant to a court order.

(4) Limitation on disclosure

An international marriage broker shall not provide the personal contact information of any foreign national client to any person or entity other than a United States client. Such information shall not be disclosed to potential United States clients or individuals who are being recruited to be United States clients or representatives.

(5) Penalties

(A) Federal civil penalty

(i) Violation

An international marriage broker that violates (or attempts to violate) paragraph (1), (2), (3), or (4) is subject to a civil penalty of not less than $5,000 and not more than $25,000 for each such violation.

(ii) Procedures for imposition of penalty

A penalty may be imposed under clause (i) by the Attorney General only after notice and an opportunity for an agency hearing on the record in accordance with subchapter II of chapter 5 of title 5 (popularly known as the Administrative Procedure Act).

(B) Federal criminal penalty

In circumstances in or affecting interstate or foreign commerce, an international marriage broker that, within the special maritime and territorial jurisdiction of the United States, violates (or attempts to violate) paragraph (1), (2), (3), or (4) shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(C) Additional remedies

The penalties and remedies under this subsection are in addition to any other penalties or remedies available under law.

(6) Nonpreemption

Nothing in this subsection shall preempt—

(A) any State law that provides additional protections for aliens who are utilizing the services of an international marriage broker; or

(B) any other or further right or remedy available under law to any party utilizing the services of an international marriage broker.

(7) Effective date

(A) In general

Except as provided in subparagraph (B), this subsection shall take effect on the date that is 60 days after January 5, 2006.

(B) Additional time allowed for information pamphlet

The requirement for the distribution of the pamphlet developed under subsection (a)(1) of this section shall not apply until 30 days after the date of its development and initial distribution under subsection (a)(6) of this section.

(e) Definitions

In this section:

(1) Crime of violence

The term ''crime of violence'' has the meaning given such term in section 16 of title 18.

(2) Domestic violence

The term ''domestic violence'' has the meaning given such term in section 3 of this Act.[1]

(3) Foreign national client

The term ''foreign national client'' means a person who is not a United States citizen or national or an alien lawfully admitted to the United States for permanent residence and who utilizes the services of an international marriage broker. Such term includes an alien residing in the United States who is in the United States as a result of utilizing the services of an international marriage broker and any alien recruited by an international marriage broker or representative of such broker.

(4) International marriage broker

(A) In general

The term ''international marriage broker'' means a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.

(B) Exceptions

Such term does not include—

(i) a traditional matchmaking organization of a cultural or religious nature that operates on a nonprofit basis and otherwise operates in compliance with the laws of the countries in which it operates, including the laws of the United States; or

(ii) an entity that provides dating services if its principal business is not to provide international dating services between United States citizens or United States residents and foreign nationals and it charges comparable rates and offers comparable services to all individuals it serves regardless of the individual's gender or country of citizenship.

(5) K nonimmigrant visa

The term ''K nonimmigrant visa'' means a nonimmigrant visa under clause (i) or (ii) of section 1101(a)(15)(K) of this title.

(6) Personal contact information

(A) In general

The term ''personal contact information'' means information, or a forum to obtain such information, that would permit individuals to contact each other, including—

[1] See References in Text note below.

(i) the name or residential, postal, electronic mail, or instant message address of an individual;

(ii) the telephone, pager, cellphone, or fax number, or voice message mailbox of an individual; or

(iii) the provision of an opportunity for an in-person meeting.

(B) Exception

Such term does not include a photograph or general information about the background or interests of a person.

(7) Representative

The term ''representative'' means, with respect to an international marriage broker, the person or entity acting on behalf of such broker. Such a representative may be a recruiter, agent, independent contractor, or other international marriage broker or other person conveying information about or to a United States client or foreign national client, whether or not the person or entity receives remuneration.

(8) State

The term ''State'' includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(9) United States

The term ''United States'', when used in a geographic sense, includes all the States.

(10) United States client

The term ''United States client'' means a United States citizen or other individual who resides in the United States and who utilizes the services of an international marriage broker, if a payment is made or a debt is incurred to utilize such services.

(f) GAO study and report

(1) Study

The Comptroller General of the United States shall conduct a study—

(A) on the impact of this section and section 832[1] on the K nonimmigrant visa process, including specifically—

(i) annual numerical changes in petitions for K nonimmigrant visas;

(ii) the annual number (and percentage) of such petitions that are denied under subsection (d)(2) or (r) of section 1184 of this title;

(iii) the annual number of waiver applications submitted under such a subsection, the number (and percentage) of such applications granted or denied, and the reasons for such decisions;

(iv) the annual number (and percentage) of cases in which the criminal background information collected and provided to the applicant as required by subsection (a)(5)(A)(iii) of this section contains one or more convictions;

(v) the annual number and percentage of cases described in clause (iv) that were granted or were denied waivers under section 1184(d)(2) of this title;

(vi) the annual number of fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have previously filed other fiancé(e) or spousal K nonimmigrant visa petitions or family-based immigration petitions;

(vii) the annual number of fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have concurrently filed other fiancé(e) or spousal K nonimmigrant visa petitioners or family-based immigration petitions; and

(viii) the annual and cumulative number of petitioners and applicants tracked in the multiple filings database established under paragraph (4) of section 1184(r) of this title;

(B) regarding the number of international marriage brokers doing business in the United States, the number of marriages resulting from the services provided, and the extent of compliance with the applicable requirements of this section;

(C) that assesses the accuracy and completeness of information gathered under section 832[1] and this section from clients and petitioners by international marriage brokers, the Department of State, or the Department of Homeland Security;

(D) that examines, based on the information gathered, the extent to which persons with a history of violence are using either the K nonimmigrant visa process or the services of international marriage brokers, or both, and the extent to which such persons are providing accurate and complete information to the Department of State or the Department of Homeland Security and to international marriage brokers in accordance with subsections (a) and (d)(2)(B) of this section; and

(E) that assesses the accuracy and completeness of the criminal background check performed by the Secretary of Homeland Security at identifying past instances of domestic violence.

(2) Report

Not later than 2 years after January 5, 2006, the Comptroller General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report setting forth the results of the study conducted under paragraph (1).

(3) Data collection

The Secretary of Homeland Security and the Secretary of State shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the study required by paragraph (1).

(Pub. L. 109–162, title VIII, §833, Jan. 5, 2006, 119 Stat. 3068.)

REFERENCES IN TEXT

Section 3 of this Act, referred to in subsec. (e)(2), is section 3 of Pub. L. 109–162, which enacted sections 3796gg–2 and 13925 of Title 42, The Public Health and Welfare, amended sections 3796gg–3, 3796hh–4, 10420, 13975, and 14039 of Title 42, repealed former section

3796gg–2 of Title 42, and amended provisions set out as a note under section 3796gg–2 of Title 42.

Section 832, referred to in subsec. (f)(1)(A), (C), is section 832 of Pub. L. 109–162, which amended section 1184 of this title and enacted provisions set out as notes under section 1184 of this title.

CODIFICATION

Section was enacted as part of the International Marriage Broker Regulation Act of 2005, and also as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 833 of Pub. L. 109–162. Subsec. (g) of section 833 of Pub. L. 109–162 repealed section 1375 of this title.

§ 1376. Data on nonimmigrant overstay rates

(a) Collection of data

Not later than the date that is 180 days after April 27, 1998, the Attorney General shall implement a program to collect data, for each fiscal year, regarding the total number of aliens within each of the classes of nonimmigrant aliens described in section 1101(a)(15) of this title whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination.

(b) Annual report

Not later than June 30, 1999, and not later than June 30 of each year thereafter, the Attorney General shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens from the country who are described in subsection (a) of this section.

(Pub. L. 105–173, § 2, Apr. 27, 1998, 112 Stat. 56.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1377. Collection of data on detained asylum seekers

(a) In general

The Attorney General shall regularly collect data on a nation-wide[1] basis with respect to asylum seekers in detention in the United States, including the following information:

(1) The number of detainees.

(2) An identification of the countries of origin of the detainees.

(3) The percentage of each gender within the total number of detainees.

(4) The number of detainees listed by each year of age of the detainees.

(5) The location of each detainee by detention facility.

(6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals.

(7) The number and frequency of the transfers of detainees between detention facilities.

(8) The average length of detention and the number of detainees by category of the length of detention.

(9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service.

(10) A description of the disposition of cases.

(b) Annual reports

Beginning October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsection (a) of this section for the fiscal year ending September 30 of that year.

(c) Availability to public

Copies of the data collected under subsection (a) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

(Pub. L. 105–277, div. A, § 101(h) [title IX, § 903], Oct. 21, 1998, 112 Stat. 2681–480, 2681–541.)

CODIFICATION

Section was enacted as part of the Haitian Refugee Immigration Fairness Act of 1998, and also as part of the Treasury and General Government Appropriations Act, 1999, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1378. Collection of data on other detained aliens

(a) In general

The Attorney General shall regularly collect data on a nationwide basis on aliens being detained in the United States by the Immigration and Naturalization Service other than the aliens described in section 1377 of this title, including the following information:

(1) The number of detainees who are criminal aliens and the number of detainees who are noncriminal aliens who are not seeking asylum.

(2) An identification of the ages, gender, and countries of origin of detainees within each category described in paragraph (1).

(3) The types of facilities, whether facilities of the Immigration and Naturalization Service or other Federal, State, or local facilities, in which each of the categories of detainees described in paragraph (1) are held.

(b) Length of detention, transfers, and dispositions

With respect to detainees who are criminal aliens and detainees who are noncriminal aliens

[1] So in original. Probably should be ''nationwide''.

who are not seeking asylum, the Attorney General shall also collect data concerning—

(1) the number and frequency of transfers between detention facilities for each category of detainee;

(2) the average length of detention of each category of detainee;

(3) for each category of detainee, the number of detainees who have been detained for the same length of time, in 3-month increments;

(4) for each category of detainee, the rate of release from detention for each district of the Immigration and Naturalization Service; and

(5) for each category of detainee, the disposition of detention, including whether detention ended due to deportation, release on parole, or any other release.

(c) Criminal aliens

With respect to criminal aliens, the Attorney General shall also collect data concerning—

(1) the number of criminal aliens apprehended under the immigration laws and not detained by the Attorney General; and

(2) a list of crimes committed by criminal aliens after the decision was made not to detain them, to the extent this information can be derived by cross-checking the list of criminal aliens not detained with other databases accessible to the Attorney General.

(d) Annual reports

Beginning on October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsections (a), (b), and (c) of this section for the fiscal year ending September 30 of that year.

(e) Availability to public

Copies of the data collected under subsections (a), (b), and (c) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

(Pub. L. 105–277, div. A, § 101(h) [title IX, § 904], Oct. 21, 1998, 112 Stat. 2681–480, 2681–542.)

CODIFICATION

Section was enacted as part of the Haitian Refugee Immigration Fairness Act of 1998, and also as part of the Treasury and General Government Appropriations Act, 1999, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1379. Technology standard to confirm identity

(1) In general

The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate and in consultation with Congress, shall within 15 months after October 26, 2001, develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name or such person seeking to enter the United States pursuant to a visa.

(2) Interoperable

The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully interoperable means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) Accessible

The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to—

(A) all consular officers responsible for the issuance of visas;

(B) all Federal inspection agents at all United States border inspection points; and

(C) all law enforcement and intelligence officers as determined by regulation to be responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) Report

Not later than one year after October 26, 2001, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system described in this section.

(5) Funding

There is authorized to be appropriated to the Secretary of State, the Attorney General, and the Director of the National Institute of Standards and Technology such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 107–56, title IV, § 403(c), Oct. 26, 2001, 115 Stat. 344; Pub. L. 107–173, title II, §§ 201(c)(5), 202(a)(4)(B), May 14, 2002, 116 Stat. 548, 549.)

CODIFICATION

Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

2002—Par. (1). Pub. L. 107–173, §§ 201(c)(5)(A), 202(a)(4)(B)(i), substituted ''15 months'' for ''2 years'' and inserted '', including appropriate biometric identifier standards,'' after ''technology standard''.

Par. (2). Pub. L. 107–173, § 202(a)(4)(B)(ii), substituted ''Interoperable'' for ''Integrated'' in heading and ''interoperable'' for ''integrated'' in text.

Par. (4). Pub. L. 107–173, § 201(c)(5)(B), substituted ''one year'' for ''18 months''.

REPORT ON THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM FOR PORTS OF ENTRY AND OVERSEAS CONSULAR POSTS

Pub. L. 107–56, title IV, § 405, Oct. 26, 2001, 115 Stat. 345, provided that:

''(a) IN GENERAL.—The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit from the United States by that person.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not less than $2,000,000 to carry out this section.''

§ 1380. Maintenance of statistics by the Department of Homeland Security

(a) In general

The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 1101(a)(15)(L) of this title, including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) Applicability

Subsection (a) of this section shall apply to petitions filed on or after the effective date of this subtitle.

(Pub. L. 108–447, div. J, title IV, § 414, Dec. 8, 2004, 118 Stat. 3352.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (b), means subtitle A (§§ 411–417) of title IV of div. J of Pub. L. 108–447. For the effective date of subtitle A, see section 417 of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note under section 1184 of this title.

CODIFICATION

Section was enacted as part of the L–1 Visa (Intracompany Transferee) Reform Act of 2004, and also as part of the L–1 Visa and H–1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

EFFECTIVE DATE

Section effective 180 days after Dec. 8, 2004, see section 417 of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note under section 1184 of this title.

§ 1381. Secretary of Labor report

Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 1182(n)(2)(G) of this title; and

(2) the expenditures by the Secretary of Labor described in section 1356(v)(2)(D) of this title.

(Pub. L. 108–447, div. J, title IV, § 424(c), Dec. 8, 2004, 118 Stat. 3356.)

CODIFICATION

Section was enacted as part of the H–1B Visa Reform Act of 2004, and also as part of the L–1 Visa and H–1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

EFFECTIVE DATE

Section effective 90 days after Dec. 8, 2004, see section 430 of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note under section 1182 of this title.

SUBCHAPTER III—NATIONALITY AND NATURALIZATION

PART I—NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

§ 1401. Nationals and citizens of United States at birth

The following shall be nationals and citizens of the United States at birth:

(a) a person born in the United States, and subject to the jurisdiction thereof;

(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was