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;[1]

(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 re-

[1] So in original. The semicolon probably should be a comma.

gardless 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 commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, 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 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.

(G) Recruitment or use of child soldiers

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 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 subject 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*)[2] 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 and Northern Mariana Islands visa waiver

For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (*l*).

(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—

[2] See References in Text note below.

(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)[3] 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 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

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

(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 physical 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[4] 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,

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

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)(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 un-

less 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, the Commonwealth of the Northern Mariana Islands, 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.[5] 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[6] 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))[7] 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[6] 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 es-

[5] So in original.

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

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

tablished 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 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 re-

sult 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 re-

spect 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 nonimmigrant 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 and Northern Mariana Islands visa waiver program**

(1) In general

The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; 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) Alien waiver of rights

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 an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or

(B) to contest, other than on the basis of an application for withholding of removal under section 1231(b)(3) of this title or under the Convention Against Torture, or an application for asylum if permitted under section 1158 of this title, any action for removal of the alien.

(3) Regulations

All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after May 8, 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding May 8, 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for nonimmigrant visitors.

(4) Factors

In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visi-

tor visas, overstays, exit systems, and information exchange.

(5) Suspension

The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary's discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) Addition of countries

The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by 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 subparagraph (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 nonimmi-

grants 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[8] 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

[8] So in original.

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 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[9] 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 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[9] any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the

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

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[10] (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[10] (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—

(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.

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

(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)[11] Nonimmigrant professionals; labor attestations

(1) No alien may be admitted or provided status as a nonimmigrant under section

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

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 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 will-

ful 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)[12] 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

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

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), Aug. 12, 2006, 120 Stat. 762; Pub. L. 110–161, div. J, title VI, § 691(a), (c), Dec. 26, 2007, 121 Stat. 2364, 2365; Pub. L. 110–229, title VII, § 702(b)(2), (3), (d), May 8, 2008, 122 Stat. 860, 862; Pub. L. 110–293, title III, § 305, July 30, 2008, 122 Stat. 2963; Pub. L. 110–340, § 2(b), Oct. 3, 2008, 122 Stat. 3736; Pub. L. 110–457, title II, §§ 222(f)(1), 234, Dec. 23, 2008, 122 Stat. 5071, 5074; Pub. L. 111–122, § 3(b), Dec. 22, 2009, 123 Stat. 3481.)

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

2009—Subsec. (a)(3)(E)(ii). Pub. L. 111–122 struck out ''conduct outside the United States that would, if committed in the United States or by a United States national, be'' before ''genocide''.

2008—Subsec. (a)(1)(A)(i). Pub. L. 110–293 substituted a semicolon for '', which shall include infection with the etiologic agent for acquired immune deficiency syndrome,''.

Subsec. (a)(2)(H)(i). Pub. L. 110–457 substituted ''who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State,'' for ''who is listed in a report submitted pursuant to section 7108(b) of title 22, or who the consular officer''.

Subsec. (a)(3)(G). Pub. L. 110–340 added subpar. (G).

Subsec. (a)(7)(B)(iii). Pub. L. 110–229, § 702(b)(2), amended cl. (iii) generally. Prior to amendment, text read as follows: ''For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (*l*) of this section.''

Subsec. (d)(7). Pub. L. 110–229, § 702(d), inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

Subsec. (*l*). Pub. L. 110–229, § 702(b)(3), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) consisted of pars. (1) to (3) relating to waiver of requirements for nonimmigrant visitors to Guam.

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 ca-

pacity 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 pro-

vided 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 immigration 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 participants 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 2008 AMENDMENT

Pub. L. 111–122, §3(c), Dec. 22, 2009, 123 Stat. 3481, provided that: ''The amendments made by subsections (b), (c), and (d) of the Child Soldiers Accountability Act of 2008 (Public Law 110–340) [probably means subsecs. (b) to (d) of section 2 of Public Law 110–340, amending this section and section 1227 of this title] shall apply to offenses committed before, on, or after the date of the enactment of the Child Soldiers Accountability Act of 2008 [Oct. 3, 2008].''

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

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; Pub. L. 110–362, §1, Oct. 8, 2008, 122 Stat. 4013; Pub. L. 111–9, §2, Mar. 20, 2009, 123 Stat. 989; Pub. L. 111–83, title V, §568(b), Oct. 28, 2009, 123 Stat. 2186, 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 September 30, 2012.''

[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 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 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.

AFRICAN NATIONAL CONGRESS; WAIVER OF CERTAIN INADMISSIBILITY GROUNDS

Pub. L. 110–257, §§2, 3, July 1, 2008, 122 Stat. 2426, provided that:

''SEC. 2. RELIEF FOR CERTAIN MEMBERS OF THE AFRICAN NATIONAL CONGRESS REGARDING ADMISSIBILITY.

''(a) EXEMPTION AUTHORITY.—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 and unreviewable discretion, that paragraphs (2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (i)(II)) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to an alien with respect to activities undertaken in association with the African National Congress in opposition to apartheid rule in South Africa.

''(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Secretary of State and the Secretary of Homeland Security should immediately exercise in appropriate instances the authority in subsection (a) to exempt the anti-apartheid activities of aliens who are current or former officials of the Government of the Republic of South Africa.

''SEC. 3. REMOVAL OF CERTAIN AFFECTED INDIVIDUALS FROM CERTAIN UNITED STATES GOVERNMENT DATABASES.

''The Secretary of State, in coordination with the Attorney General, the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided under section 2.''

AVAILABILITY OF OTHER NONIMMIGRANT PROFESSIONALS

Pub. L. 110–229, title VII, §702(k), May 8, 2008, 122 Stat. 867, provided that: ''The requirements of section 212(m)(6)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(m)(6)(B)) shall not apply to a facility in Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands.''

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. 111–117, div. F, title VII, §7084, Dec. 16, 2009, 123 Stat. 3400, 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 has credible evidence have been involved in corruption relating to the extraction of natural resources in their countries.

''(b) Any individual on the list compiled under subsection (a) shall be ineligible for admission to the United States.

''(c) The Secretary may waive the application of subsection (b) 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. 16, 2009] and 180 days thereafter, the Secretary of State shall report in writing, in classified form if necessary, to the Committees on Appropriations describing the evidence of corruption concerning each of the individuals listed pursuant to subsection (a).''

Similar provisions were contained in the following prior acts:

Pub. L. 111–8, div. H, title VII, § 7086, Mar. 11, 2009, 123 Stat. 912.

Pub. L. 110–161, div. J, title VI, § 699L, Dec. 26, 2007, 121 Stat. 2373.

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 Processing 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.

PROC. NO. 8342. TO SUSPEND ENTRY AS IMMIGRANTS AND NONIMMIGRANTS OF FOREIGN GOVERNMENT OFFICIALS RESPONSIBLE FOR FAILING TO COMBAT TRAFFICKING IN PERSONS

Proc. No. 8342, Jan. 16, 2009, 74 F.R. 4093, provided:

In order to foster greater resolve to address trafficking in persons (TIP), specifically in punishing acts of trafficking and providing protections to the victims of these crimes, consistent with the Trafficking Victims Protection Act of 2000, as amended (the ''Act'') (22 U.S.C. 7101 *et seq.*), it is in the interests of the United States to restrict the international travel and to suspend entry into the United States, as immigrants or nonimmigrants, of certain senior government officials responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and whose governments have been ranked more than once as Tier 3 countries, which represent the worst anti-TIP performers, in the Department of State's annual Trafficking in Persons Report, and for which I have made a determination pursuant to section 110(d)(1)–(2) or (4) of the Act. The Act reflects international antitrafficking standards that guide efforts to eradicate this modern-day form of slavery around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of 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 for 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 aliens is hereby suspended:

(a) Senior government officials—defined as the heads of ministries or agencies and officials occupying positions within the two bureaucratic levels below those top positions—responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and who are members of governments for which I have made a determination pursuant to section 110(d)(1)–(2) or (4) of the Act, in the current year and at least once in the preceding 3 years;

(b) The spouses of persons described in subsection (a) of this section.

SEC. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

SEC. 3. Persons covered by sections 1 or 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 procedures as the Secretary may establish under section 5 of this proclamation.

SEC. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

SEC. 5. The Secretary of State shall implement this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

SEC. 6. This proclamation is effective immediately. It shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such determination by the Secretary of State shall be published in the Federal Register.

SEC. 7. This proclamation is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

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.