EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

COMMISSION ON AGRICULTURAL WORKERS

Section 304 of Pub. L. 99–603, as amended by Pub. L. 101–649, title VII, § 704, Nov. 29, 1990, 104 Stat. 5086; Pub. L. 102–232, title III, § 308(c), Dec. 12, 1991, 105 Stat. 1757, established Commission on Agricultural Workers to evaluate special agricultural worker provisions and labor markets in agricultural industry, required Commission to report to Congress not later than six years after Nov. 6, 1986, on its reviews, and provided that Commission terminate at the end of the 75-month period beginning with the month after November 1986.

§ 1161. Repealed. Pub. L. 103–416, title II, § 219(ee)(1), Oct. 25, 1994, 108 Stat. 4319

Section, act June 27, 1952, ch. 477, title II, ch. 1, § 210A, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 303(a), 100 Stat. 3422; amended Oct. 24, 1988, Pub. L. 100–525, § 2(n)(1), 102 Stat. 2613; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(6), (b)(1), 104 Stat. 5083, 5085; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(2), 105 Stat. 1756, related to determination of agricultural labor shortages and admission of additional special agricultural workers.

EFFECTIVE DATE OF REPEAL

Section 219(ee)(3) of Pub. L. 103–416, as added by Pub. L. 104–208, div. C, title VI, § 671(b)(10), Sept. 30, 1996, 110 Stat. 3009–722, provided that: ''The amendments made by this subsection [repealing this section] shall take effect on the date of the enactment of this Act [Oct. 25, 1994].''

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

§ 1181. Admission of immigrants into the United States

(a) Documents required; admission under quotas before June 30, 1968

Except as provided in subsection (b) and subsection (c) of this section no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) Readmission without required documents; Attorney General's discretion

Notwithstanding the provisions of section 1182(a)(7)(A) of this title in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 1101(a)(27)(A) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

(c) Nonapplicability to aliens admitted as refugees

The provisions of subsection (a) of this section shall not apply to an alien whom the Attorney General admits to the United States under section 1157 of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 211, 66 Stat. 181; Pub. L. 89–236, § 9, Oct. 3, 1965, 79 Stat. 917; Pub. L. 94–571, § 7(c), Oct. 20, 1976, 90 Stat. 2706; Pub. L. 96–212, title II, § 202, Mar. 17, 1980, 94 Stat. 106; Pub. L. 101–649, title VI, § 603(a)(7), Nov. 29, 1990, 104 Stat. 5083.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–649 substituted ''1182(a)(7)(A)'' for ''1182(a)(20)''.

1980—Subsec. (a). Pub. L. 96–212, § 202(1), inserted reference to subsection (c) of this section.

Subsec. (c). Pub. L. 96–212, § 202(2), added subsec. (c).

1976—Subsec. (b). Pub. L. 94–571 substituted reference to section 1101 ''(a)(27)(A)'' of this title for ''(a)(27)(B)''.

1965—Subsec. (a). Pub. L. 89–236 restated requirement of an unexpired visa and passport for every immigrant arriving in United States to conform to the changes with respect to the classification of immigrant visas.

Subsec. (b). Pub. L. 89–236 substituted ''returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible'', for ''otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily''.

Subsec. (c). Pub. L. 89–236 repealed subsec. (c) which gave Attorney General discretionary authority to admit aliens who arrive in United States with defective visas under specified conditions.

Subsec. (d). Pub. L. 89–236 repealed subsec. (d) which imposed restrictions on exercise of Attorney General's discretion to admit aliens arriving with defective visas.

Subsec. (e). Pub. L. 89–236 repealed subsec. (e) which required every alien making application for admission as an immigrant to present the documents required under regulations issued by Attorney General.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–212 effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds

(A) In general

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;[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.

(b) Exceptions

The prohibitions in subsection (a) of this section shall not apply in the case of a foreign national who is a head of state, head of government, or cabinet level minister.

(c) Waiver

The Secretary of State may waive the prohibitions in subsection (a) of this section with respect to a foreign national if the Secretary—

(1) determines that it is important to the national interest of the United States to do so; and

(2) provides written notification to the appropriate congressional committees containing a justification for the waiver.

(Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title VIII, § 801], Nov. 29, 1999, 113 Stat. 1536, 1501A–468.)

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1182f. Denial of entry into United States of Chinese and other nationals engaged in coerced organ or bodily tissue transplantation

(a) Denial of entry

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, the Secretary shall direct consular officers not to issue a visa to any person whom the Secretary finds, based on credible and specific information, to have been directly involved with the coercive transplantation of human organs or bodily tissue, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such practices.

(b) Exception

The prohibitions in subsection (a) of this section do not apply to an applicant who is a head of state, head of government, or cabinet-level minister.

(c) Waiver

The Secretary may waive the prohibitions in subsection (a) of this section with respect to a foreign national if the Secretary—

(1) determines that it is important to the national interest of the United States to do so; and

(2) not later than 30 days after the issuance of a visa, provides written notification to the appropriate congressional committees containing a justification for the waiver.

(Pub. L. 107–228, div. A, title II, § 232, Sept. 30, 2002, 116 Stat. 1372.)

CODIFICATION

Section was enacted as part of the Department of State Authorization Act, Fiscal Year 2003, and also as part of the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Immigration and Nationality Act which comprises this chapter.

DEFINITIONS

For definitions of ''Secretary'' and ''appropriate congressional committees'' as used in this section, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.

§ 1183. Admission of aliens on giving bond or undertaking; return upon permanent departure

An alien inadmissible under paragraph (4) of section 1182(a) of this title may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title) upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge, irrespective of whether a demand for payment of public expenses has been made.

(June 27, 1952, ch. 477, title II, ch. 2, § 213, 66 Stat. 188; Pub. L. 91–313, § 1, July 10, 1970, 84 Stat. 413; Pub. L. 101–649, title VI, § 603(a)(8), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104–208, div. C, title III, § 308(d)(3)(A), title V, § 564(f), Sept. 30, 1996, 110 Stat. 3009–617, 3009–684.)

AMENDMENTS

1996—Pub. L. 104–208, § 564(f), inserted ''(subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title)'' after ''in the discretion of the Attorney General''.

Pub. L. 104–208, § 308(d)(3)(A), substituted ''inadmissible'' for ''excludable''.

1990—Pub. L. 101–649 substituted ''(4)'' for ''(7) or (15)'' and inserted before period at end '', irrespective of whether a demand for payment of public expenses has been made'' after ''becomes a public charge''.

1970—Pub. L. 91–313 substituted provisions admitting, under the specified conditions, an alien excludable under pars. (7) or (15) of section 1182(a) of this title, for provisions admitting, under the specified conditions, any alien excludable because of the likelihood of becoming a public charge or because of physical disability other than tuberculosis in any form, leprosy, or a dangerous contagious disease, and struck out provisions authorizing a cash deposit with the Attorney General in lieu of a bond, such amount to be deposited in the United States Postal Savings System, and provi-

sions that the admission of the alien be consideration for the giving of the bond, undertaking, or cash deposit.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(3)(A) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 564(f) of Pub. L. 104–208 effective Sept. 30, 1996, see section 591 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1183a. Requirements for sponsor's affidavit of support

(a) Enforceability

(1) Terms of affidavit

No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 1182(a)(4) of this title unless such affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit (as defined in subsection (e)[1] of this section), consistent with the provisions of this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (b)(2) of this section.

(2) Period of enforceability

An affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).

(3) Termination of period of enforceability upon completion of required period of employment, etc.

(A) In general

An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(B) Qualifying quarters

For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C. 401 et seq.] an alien shall be credited with—

(i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and

(ii) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable under title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under clause (i) or (ii) if the parent or spouse (as the case may be) of such alien received any Federal means-tested public benefit (as provided under section 1613 of this title) during the period for which such qualifying quarter of coverage is so credited.

(C) Provision of information to save system

The Attorney General shall ensure that appropriate information regarding the application of this paragraph is provided to the system for alien verification of eligibility (SAVE) described in section 1137(d)(3) of the Social Security Act [42 U.S.C. 1320b–7(d)(3)].

(b) Reimbursement of government expenses

(1) Request for reimbursement

(A) Requirement

Upon notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity which provided such benefit or the appropriate entity of the Federal Government, a State, or any political subdivision of a State shall request reimbursement by the sponsor in an amount which is equal to the unreimbursed costs of such benefit.

(B) Regulations

The Attorney General, in consultation with the heads of other appropriate Federal agencies, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

(2) Actions to compel reimbursement

(A) In case of nonresponse

If within 45 days after a request for reimbursement under paragraph (1)(A), the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment an action may be brought against the sponsor pursuant to the affidavit of support.

[1] See References in Text note below.

(B) In case of failure to pay

If the sponsor fails to abide by the repayment terms established by the appropriate entity, the entity may bring an action against the sponsor pursuant to the affidavit of support.

(C) Limitation on actions

No cause of action may be brought under this paragraph later than 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) Use of collection agencies

If the appropriate entity under paragraph (1)(A) requests reimbursement from the sponsor or brings an action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire an individual or other person to act on behalf of such entity acting under the authority of law for purposes of collecting any amounts owed.

(c) Remedies

Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31.

(d) Notification of change of address

(1) General requirement

The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently a resident within 30 days of any change of address of the sponsor during the period in which an affidavit of support is enforceable.

(2) Penalty

Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall, after notice and opportunity to be heard, be subject to a civil penalty of—

(A) not less than $250 or more than $2,000, or

(B) if such failure occurs with knowledge that the sponsored alien has received any means-tested public benefits (other than benefits described in section 1611(b), 1613(c)(2), or 1621(b) of this title) not less than $2,000 or more than $5,000.

The Attorney General shall enforce this paragraph under appropriate regulations.

(e) Jurisdiction

An action to enforce an affidavit of support executed under subsection (a) of this section may be brought against the sponsor in any appropriate court—

(1) by a sponsored alien, with respect to financial support; or

(2) by the appropriate entity of the Federal Government, a State or any political subdivision of a State, or by any other nongovernmental entity under subsection (b)(2) of this section, with respect to reimbursement.

(f) "Sponsor" defined

(1) In general

For purposes of this section the term ''sponsor'' in relation to a sponsored alien means an individual who executes an affidavit of support with respect to the sponsored alien and who—

(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

(B) is at least 18 years of age;

(C) is domiciled in any of the several States of the United States, the District of Columbia, or any territory or possession of the United States;

(D) is petitioning for the admission of the alien under section 1154 of this title; and

(E) demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.

(2) Income requirement case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(3) Active duty armed services case

Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but is on active duty (other than active duty for training) in the Armed Forces of the United States, is petitioning for the admission of the alien under section 1154 of this title as the spouse or child of the individual, and demonstrates (as provided in paragraph (6)) the means to maintain an annual income equal to at least 100 percent of the Federal poverty line.

(4) Certain employment-based immigrants case

Such term also includes an individual—

(A) who does not meet the requirement of paragraph (1)(D), but is the relative of the sponsored alien who filed a classification petition for the sponsored alien as an employment-based immigrant under section 1153(b) of this title or who has a significant ownership interest in the entity that filed such a petition; and

(B)(i) who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line, or

(ii) does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

(5) Non-petitioning cases

Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—

(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(i) the individual petitioning under section 1154 of this title for the classification of such alien died after the approval of such petition, and the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 1155 of this title would be inappropriate; or

(ii) the alien's petition is being adjudicated pursuant to section 1154(*l*) of this title (surviving relative consideration).

(6) Demonstration of means to maintain income

(A) In general

(i) Method of demonstration

For purposes of this section, a demonstration of the means to maintain income shall include provision of a certified copy of the individual's Federal income tax return for the individual's 3 most recent taxable years and a written statement, executed under oath or as permitted under penalty of perjury under section 1746 of title 28, that the copies are certified copies of such returns.

(ii) Flexibility

For purposes of this section, aliens may demonstrate the means to maintain income through demonstration of significant assets of the sponsored alien or of the sponsor, if such assets are available for the support of the sponsored alien.

(iii) Percent of poverty

For purposes of this section, a reference to an annual income equal to at least a particular percentage of the Federal poverty line means an annual income equal to at least such percentage of the Federal poverty line for a family unit of a size equal to the number of members of the sponsor's household (including family and non-family dependents) plus the total number of other dependents and aliens sponsored by that sponsor.

(B) Limitation

The Secretary of State, or the Attorney General in the case of adjustment of status, may provide that the demonstration under subparagraph (A) applies only to the most recent taxable year.

(h)[2] "Federal poverty line" defined

For purposes of this section, the term "Federal poverty line" means the level of income equal to the official poverty line (as defined by the Director of the Office of Management and Budget, as revised annually by the Secretary of Health and Human Services, in accordance with section 9902(2) of title 42) that is applicable to a family of the size involved.

(i) Sponsor's social security account number required to be provided

(1) An affidavit of support shall include the social security account number of each sponsor.

(2) The Attorney General shall develop an automated system to maintain the social security account number data provided under paragraph (1).

(3) The Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and the Senate setting forth—

(A) for the most recent fiscal year for which data are available the number of sponsors under this section and the number of sponsors in compliance with the financial obligations of this section; and

(B) a comparison of such numbers with the numbers of such sponsors for the preceding fiscal year.

(June 27, 1952, ch. 477, title II, ch. 2, §213A, as added Pub. L. 104–193, title IV, §423(a), Aug. 22, 1996, 110 Stat. 2271; amended Pub. L. 104–208, div. C, title V, §551(a), Sept. 30, 1996, 110 Stat. 3009–675; Pub. L. 107–150, §2(a)(1), (3), Mar. 13, 2002, 116 Stat. 74, 75; Pub. L. 111–83, title V, §568(e), Oct. 28, 2009, 123 Stat. 2187.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in subsec. (a)(1)(B), does not define "means-tested public benefit".

The Social Security Act, referred to in subsec. (a)(3)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2009—Subsec. (f)(5)(B)(i), (ii). Pub. L. 111–83, added cls. (i) and (ii) and struck out former cls. (i) and (ii), which read as follows:

"(i) the individual petitioning under section 1154 of this title for the classification of such alien died after the approval of such petition; and

"(ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 1155 of this title would be inappropriate."

2002—Subsec. (f)(2), (4)(B)(ii). Pub. L. 107–150, §2(a)(3), substituted "paragraph (5)(A)" for "paragraph (5)".

Subsec. (f)(5). Pub. L. 107–150, §2(a)(1), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: "Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line."

1996—Pub. L. 104–208 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f) relating to requirements for sponsor's affidavits of support.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–150 applicable with respect to deaths occurring before, on, or after Mar. 13, 2002, except that, in case of death occurring before such

[2] So in original. Section enacted without a subsec. (g).

date, such amendments shall apply only if (1) the sponsored alien requests Attorney General to reinstate the classification petition that was filed with respect to the alien by deceased and approved under section 1154 of this title before such death and demonstrates that he or she is able to satisfy requirement of section 1182(a)(4)(C)(ii) of this title by reason of such amendments; and (2) Attorney General reinstates such petition after making the determination described in subsec. (f)(5)(B)(ii) of this section, see section 2(b) of Pub. L. 107–150, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS; PROMULGATION OF FORM

Section 551(c) of div. C of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section, amending sections 1631 and 1632 of this title, and repealing provisions set out as a note under this section] shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under paragraph (2).

''(2) PROMULGATION OF FORM.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the heads of other appropriate agencies, shall promulgate a standard form for an affidavit of support consistent with the provisions of section 213A of the Immigration and Nationality Act [this section], as amended by subsection (a).''

Section 423(c) of Pub. L. 104–193 provided that subsec. (a) of this section was applicable to affidavits of support executed on or after a date specified by Attorney General, which date was to be not earlier than 60 days (and not later than 90 days) after date Attorney General formulated form for such affidavits under subsec. (b) of this section, prior to repeal by Pub. L. 104–208, div. C, title V, § 551(b)(2), Sept. 30, 1996, 104 Stat. 3009–679.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

FEES RELATING TO AFFIDAVITS OF SUPPORT

Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 232], Nov. 29, 1999, 113 Stat. 1536, 1501A–425, as amended by Pub. L. 107–228, div. A, title II, § 211(b), Sept. 30, 2002, 116 Stat. 1365, provided that:

''(a) AUTHORITY TO CHARGE FEE.—The Secretary of State may charge and retain a fee or surcharge for services provided by the Department of State to any sponsor who provides an affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) to ensure that such affidavit is properly completed before it is forwarded to a consular post for adjudication by a consular officer in connection with the adjudication of an immigrant visa. Such fee or surcharge shall be in addition to and separate from any fee imposed for immigrant visa application processing and issuance, and shall recover only the costs of such services not recovered by such fee.

''(b) LIMITATION.—Any fee established under subsection (a) shall be charged only once to a sponsor or joint sponsors who file essentially duplicative affidavits of support in connection with separate immigrant visa applications from the spouse and children of any petitioner required by the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] to petition separately for such persons.

''(c) TREATMENT OF FEES.—Fees collected under the authority of subsection (a) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of providing consular services. Such fees shall remain available for obligation until expended.''

PILOT PROGRAMS TO REQUIRE BONDING

Section 564 of div. C of Pub. L. 104–208 provided that:

''(a) IN GENERAL.—

''(1) The Attorney General of the United States shall establish a pilot program in 5 district offices of the Immigration and Naturalization Service to require aliens to post a bond in addition to the affidavit requirements under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631). Any pilot program established pursuant to this subsection shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in section 213A(d)(2)(B) of the Immigration and Nationality Act (as amended by section 551(a) of this division) for the alien and the alien's dependents and shall remain in effect until the departure, naturalization, or death of the alien.

''(2) Suit on any such bonds may be brought under the terms and conditions set forth in section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

''(b) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General shall issue regulations for establishing the pilot programs, including—

''(1) criteria and procedures for—

''(A) certifying bonding companies for participation in the program, and

''(B) debarment of any such company that fails to pay a bond, and

''(2) criteria for setting the amount of the bond to assure that the bond is in an amount that is not less than the cost of providing benefits under the programs described in subsection (a)(1) for the alien and the alien's dependents for 6 months.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

''(d) ANNUAL REPORTING REQUIREMENT.—Beginning 9 months after the date of implementation of the pilot program, the Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and the Senate a report on the effectiveness of the program. The Attorney General shall submit a final evaluation of the program not later than 1 year after termination.

''(e) SUNSET.—The pilot program under this section shall terminate after 3 years of operation.

''(f) BONDS IN ADDITION TO SPONSORSHIP AND DEEMING REQUIREMENTS.—[Amended section 1183 of this title.]''

BENEFITS NOT SUBJECT TO REIMBURSEMENT

Section 423(d) of Pub. L. 104–193, as amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(3)(B), (f)(3)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 106–78, title VII, § 752(b)(6), Oct. 22, 1999, 113 Stat. 1169, provided that: ''Requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] shall not apply with respect to the following:

''(1) Medical assistance described in section 401(b)(1)(A) [8 U.S.C. 1611(b)(1)(A)] or assistance described in section 411(b)(1) [8 U.S.C. 1621(b)(1)].

''(2) Short-term, non-cash, in-kind emergency disaster relief.

''(3) Assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

''(4) Assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

''(5) Public health assistance for immunizations (not including any assistance under title XIX of the

Social Security Act [42 U.S.C. 1396 et seq.]) with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

''(6) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.] for a parent or a child, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431 [8 U.S.C. 1641]).

''(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

''(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 1101 et seq., 1134 et seq., 1135 et seq., 42 U.S.C. 2751 et seq.], and titles III, VII, and VIII of the Public Health Service Act [42 U.S.C. 241 et seq., 292 et seq., 296 et seq.].

''(9) Benefits under the Head Start Act [42 U.S.C. 9831 et seq.].

''(10) Means-tested programs under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

''(11) Benefits under the [sic] title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].''

§ 1184. Admission of nonimmigrants

(a) Regulations

(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam or the Commonwealth of the Northern Mariana Islands without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or the Commonwealth of the Northern Mariana Islands or to remain in Guam or the Commonwealth of the Northern Mariana Islands for a period exceeding 45 days from date of admission to Guam or the Commonwealth of the Northern Mariana Islands. No alien admitted to the United States without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(O) of this title shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(P) of this title shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 1101(a)(15)(P) of this title, the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(b) Presumption of status; written waiver

Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of this title. An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act [22 U.S.C. 288 et seq.], or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257(b) of this title.

(c) Petition of importing employer

(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of section 1101(a)(15) of this title (excluding nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, the term ''appropriate agencies of Government'' means the Department of Labor and includes the Department of Agriculture. The provisions of section 1188 of this title shall apply to the question of importing any alien as a nonimmigrant under section 1101(a)(15)(H)(ii)(a) of this title.

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 1101(a)(15)(L) of this title instead of fil-

ing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for admission of aliens covered under such a petition.

(B) For purposes of section 1101(a)(15)(L) of this title, an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 1101(a)(15)(L) of this title within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for—

(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 1101(a)(15)(L) of this title shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 1101(a)(15)(L) of this title shall not exceed 5 years.

(E) In the case of an alien spouse admitted under section 1101(a)(15)(L) of this title, who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ''employment authorized'' endorsement or other appropriate work permit.

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(a)(15)(L) of this title and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 1101(a)(15)(L) of this title if—

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

(3) The Attorney General shall approve a petition—

(A) with respect to a nonimmigrant described in section 1101(a)(15)(O)(i) of this title only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

(B) with respect to a nonimmigrant described in section 1101(a)(15)(O)(ii) of this title after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) For purposes of section 1101(a)(15)(P)(i)(a) of this title, an alien is described in this subparagraph if the alien—

(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(II) is a professional athlete, as defined in section 1154(i)(2) of this title;

(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if—

(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country;

(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and

(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or

(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production; and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing—

(I) as such an athlete with respect to a specific athletic competition; or

(II) in the case of an individual described in clause (i)(IV), in a specific theatrical ice skating production or tour.

(B)(i) For purposes of section 1101(a)(15)(P)(i)(b) of this title, an alien is described in this subparagraph if the alien—

(I) performs with or is an integral and essential part of the performance of an entertain-

ment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,

(II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial relationship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and

(III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

(iv) The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 1101(a)(15)(P) of this title.

(D) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 1101(a)(15)(P) of this title only after consultation in accordance with paragraph (6).

(E) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 1101(a)(15)(P)(ii) of this title only after consultation with labor organizations representing artists and entertainers in the United States.

(F)(i) No nonimmigrant visa under section 1101(a)(15)(P)(i)(a) of this title shall be issued to any alien who is a national of a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety, national security, or national interest of the United States. In making a determination under this subparagraph, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

(ii) In this subparagraph, the term ''state sponsor of international terrorism'' means any country the government of which has been determined by the Secretary of State under any of the laws specified in clause (iii) to have repeatedly provided support for acts of international terrorism.

(iii) The laws specified in this clause are the following:

(I) Section 2405(j)(1)(A) of title 50, Appendix (or successor statute).

(II) Section 2780(d) of title 22.

(III) Section 2371(a) of title 22.

(G) The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than 1 alien as a nonimmigrant under section 1101(a)(15)(P)(i)(a) of this title.

(H) The Secretary of Homeland Security shall permit an athlete, or the employer of an athlete, to seek admission to the United States for such athlete under a provision of this chapter other than section 1101(a)(15)(P)(i) of this title if the athlete is eligible under such other provision.

(5)(A) In the case of an alien who is provided nonimmigrant status under section 1101(a)(15)(H)(i)(b) or 1101(a)(15)(H)(ii)(b) of this title and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

(B) In the case of an alien who is admitted to the United States in nonimmigrant status under section 1101(a)(15)(O) or 1101(a)(15)(P) of this title and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(i) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a peer group (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(ii) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the skill area involved.

(iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(P)(i) or 1101(a)(15)(P)(iii) of this title, the petitioner shall submit with the petition an advisory opinion from a labor organization with

expertise in the specific field of athletics or entertainment involved.

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion.

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

(E)(i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 1101(a)(15)(O) or 1101(a)(15)(P) of this title to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 1101(a)(15)(O)(i) or 1101(a)(15)(P)(i) of this title in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a nongovernmental entity shall be construed as permitting the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 1101(a)(15) of this title the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before[1] a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(i)(b) of this title;

(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or

(iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be $1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(10) An amended H–1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.

(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 1182(t) of this title—

(i) in order that an alien may be initially granted nonimmigrant status described in section 1101(a)(15)(H)(i)(b1) of this title; or

(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) of this section for an alien having such status to obtain certain extensions of stay.

(B) The amount of the fee shall be the same as the amount imposed by the Secretary of Homeland Security under paragraph (9), except that if such paragraph does not authorize such Secretary to impose any fee, no fee shall be imposed under this paragraph.

[1] So in original. The word ''before'' probably should not appear.

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(s) of this title.

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 1101(a)(15) of this title; or

(ii) to obtain authorization for an alien having such status to change employers.

(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 1101(a)(15)(L) of this title, if the alien is covered under a blanket petition described in paragraph (2)(A).

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be $500.

(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 1356(v) of this title.

(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 1101(a)(15)(H)(ii)(b) of this title.

(B) The amount of the fee imposed under subparagraph (A) shall be $150.

(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 1101(a)(15)(H)(ii)(b) of this title or a willful misrepresentation of a material fact in such petition—

(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 1154 of this title or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

(B) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

(D) In this paragraph, the term ''substantial failure'' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.

(d) Issuance of visa to fiancée or fiancé of citizen

(1) A visa shall not be issued under the provisions of section 1101(a)(15)(K)(i) of this title until the consular officer has received a petition filed in the United States by the fiancée and fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 1229a and 1231 of this title.

(2)(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that—

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that—

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connec-

tion between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms ''domestic violence'', ''sexual assault'', ''child abuse and neglect'', ''dating violence'', ''elder abuse'', and ''stalking'' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.[2]

(B) The term ''specified crime'' means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(e) Nonimmigrant professionals and annual numerical limit

(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as ''NAFTA'') to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this chapter, including the issuance of entry documents and the application of subsection (b) of this section, such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 1101(a)(15) of this title. The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of NAFTA.

(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 2155 of title 19;

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

(i) the action proposed to be taken and the reasons therefor, and

(ii) the advice obtained under subparagraph (A);

(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and

(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 1182(m) of this title, in the case of a registered nurse, or the application requirement of section 1182(n) of this title, in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c) of this section, to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 1182(m) and 1182(n) of this title, and the Attorney General, with respect to subsection (c) of this section.

(6) In the case of an alien spouse admitted under section 1101(a)(15)(E) of this title, who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ''employment authorized'' endorsement or other appropriate work permit.

(f) Denial of crewmember status in case of certain labor disputes

(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 1101(a)(15)(D) of this title if

[2] See References in Text note below.

the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 116 of title 46) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

(2) An alien described in paragraph (1)—

(A) may not be paroled into the United States pursuant to section 1182(d)(5) of this title unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

(B) shall be considered not to be a bona fide crewman for purposes of section 1282(b) of this title.

(3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;

(B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and

(C) shall continue to provide the same services that such alien provided as such a crewman.

(g) Temporary workers and trainees; limitation on numbers

(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 1101(a)(15)(H)(i)(b) of this title, may not exceed—

(i) 65,000 in each fiscal year before fiscal year 1999;

(ii) 115,000 in fiscal year 1999;

(iii) 115,000 in fiscal year 2000;

(iv) 195,000 in fiscal year 2001;

(v) 195,000 in fiscal year 2002;

(vi) 195,000 in fiscal year 2003; and

(vii) 65,000 in each succeeding fiscal year; or

(B) under section 1101(a)(15)(H)(ii)(b) of this title may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title, the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 1101(a)(15)(H)(i)(b) of this title who—

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 1001(a) of title 20), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 1101(a)(15)(H)(i)(b) of this title, who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).

(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c) of this section, toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

(8)(A) The agreements referred to in section 1101(a)(15)(H)(i)(b1) of this title are—

(i) the United States-Chile Free Trade Agreement; and

(ii) the United States-Singapore Free Trade Agreement.

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 1101(a)(15)(H)(i)(b1) of this title.

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 1101(a)(15)(H)(i)(b) of this title may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(9)(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under section 1101(a)(15)(H)(ii)(b) of this title shall include, with respect to a returning worker—

(i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under section 1101(a)(15)(H)(ii)(b) of this title;

(ii) the full name of the alien; and

(iii) a certification to the Department of Homeland Security that the alien is a returning worker.

(C) An H–2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by—

(i) the Department of State; or

(ii) if the alien is visa exempt or seeking to change to status under section 1101 (a)(15)(H)(ii)(b) of this title, the Department of Homeland Security.

(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens subject to such numerical limits who enter the United States pursuant to a visa or are accorded nonimmigrant status under section 1101(a)(15)(H)(ii)(b) of this title during the first 6 months of such fiscal year is not more than 33,000.

(11)(A) The Secretary of State may not approve a number of initial applications submitted for aliens described in section 1101(a)(15)(E)(iii) of this title that is more than the applicable numerical limitation set out in this paragraph.

(B) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(C) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

(h) Intention to abandon foreign residence

The fact that an alien is the beneficiary of an application for a preference status filed under section 1154 of this title or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 1101(a)(15) of this title or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 1258 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i) "Specialty occupation" defined

(1) Except as provided in paragraph (3), for purposes of section 1101(a)(15)(H)(i)(b) of this title, section 1101(a)(15)(E)(iii) of this title, and paragraph (2), the term ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b) of this title, the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

(3) For purposes of section 1101(a)(15)(H)(i)(b1) of this title, the term ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of specialized knowledge; and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j) Labor disputes

(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the

North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term ''citizen of Mexico'' means ''citizen'' as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this chapter except section 1182(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 1101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

(k) Numerical limitations; period of admission; conditions for admission and stay; annual report

(1) The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(i) of this title in any fiscal year may not exceed 200. The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(ii) of this title in any fiscal year may not exceed 50.

(2) The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General.

(3) As a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant—

(A) shall report not less often than quarterly to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission;

(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal, any action for removal of the alien instituted before the alien obtains lawful permanent resident status; and

(D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

(4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning—

(A) the number of such nonimmigrants admitted;

(B) the number of successful criminal prosecutions or investigations resulting from cooperation of such aliens;

(C) the number of terrorist acts prevented or frustrated resulting from cooperation of such aliens;

(D) the number of such nonimmigrants whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (3)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

***(l)* Restrictions on waiver**

(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 1182(e) of this title on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency—

(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an in-

terested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 10; and

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.

(2)(A) Notwithstanding section 1258(a)(2) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and section 1182(e) of this title to that of an alien described in section 1101(a)(15)(H)(i)(b) of this title. The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section 1182(e) of this title shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section 1101(a)(27)(H) of this title, if—

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

(m) Nonimmigrant elementary and secondary school students

(1) An alien may not be accorded status as a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study—

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and (ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 1101(a)(15)(F) of this title shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(n) Increased portability of H–1B status

(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(b) of this title is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a) of this section. Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(A) who has been lawfully admitted into the United States;

(B) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Attorney General; and

(C) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

(*o*) Nonimmigrants guilty of trafficking in persons

(1) No alien shall be eligible for admission to the United States under section 1101(a)(15)(T) of this title if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 7102 of title 22).

(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 1101(a)(15)(T) of this title may not exceed 5,000.

(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(T)(i) of this title, and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(T)(ii) of this title, if the alien attains 21 years of age after such parent's application was filed but while it was pending.

(5) An alien described in clause (i) of section 1101(a)(15)(T) of this title shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 1101(a)(15)(T)(i)(III)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons (as defined in section 7102 of title 22) appear to have been involved, shall be considered.

(7)(A) Except as provided in subparagraph (B), an alien who is issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(T) of this title may be granted such status for a period of not more than 4 years.

(B) An alien who is issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(T) of this title may extend the period of such status beyond the period described in subparagraph (A) if—

(i) a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking or certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;

(ii) the alien is eligible for relief under section 1255(*l*) of this title and is unable to obtain such relief because regulations have not been issued to implement such section; or

(iii) the Secretary of Homeland Security determines that an extension of the period of such nonimmigrant status is warranted due to exceptional circumstances.

(C) Nonimmigrant status under section 1101(a)(15)(T) of this title shall be extended during the pendency of an application for adjustment of status under section 1255(*l*) of this title.

(p) Requirements applicable to section 1101(a)(15)(U) visas

(1) Petitioning procedures for section 1101(a)(15)(U) visas

The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien ''has been helpful, is being helpful, or is likely to be helpful'' in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(2) Numerical limitations

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 1101(a)(15)(U)(i) of this title, and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) Duties of the Attorney General with respect to "U" visa nonimmigrants

With respect to nonimmigrant aliens described in subsection (a)(15)(U) of section 1101 of this title—

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) Credible evidence considered

In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) Nonexclusive relief

Nothing in this subsection limits the ability of aliens who qualify for status under section 1101(a)(15)(U) of this title to seek any other immigration benefit or status for which the alien may be eligible.

(6) Duration of status

The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority inves-

tigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.

(q) Employment of nonimmigrants described in section 1101(a)(15)(V)

(1) In the case of a nonimmigrant described in section 1101(a)(15)(V) of this title—

(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment; and

(B) the period of authorized admission as such a nonimmigrant shall terminate 30 days after the date on which any of the following is denied:

(i) The petition filed under section 1154 of this title to accord the alien a status under section 1153(a)(2)(A) of this title (or, in the case of a child granted nonimmigrant status based on eligibility to receive a visa under section 1153(d) of this title, the petition filed to accord the child's parent a status under section 1153(a)(2)(A) of this title).

(ii) The alien's application for an immigrant visa pursuant to the approval of such petition.

(iii) The alien's application for adjustment of status under section 1255 of this title pursuant to the approval of such petition.

(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 1101(a)(15)(V) of this title, the grounds for inadmissibility specified in section 1182(a)(9)(B) of this title shall not apply.

(3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 1101(a)(15)(V) of this title, if the alien—

(A) applies for such adjustment;

(B) satisfies the requirements of such section; and

(C) is eligible to be admitted to the United States, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 1182(a) of this title shall not apply.

(r) Visas of nonimmigrants described in section 1101(a)(15)(K)(ii)

(1) A visa shall not be issued under the provisions of section 1101(a)(15)(K)(ii) of this title until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime.

(2) In the case of an alien seeking admission under section 1101(a)(15)(K)(ii) of this title who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 1182(a)(7)(B) of this title if the alien is not at the time of application for admission in possession of a valid nonimmigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

(3) In the case of a nonimmigrant described in section 1101(a)(15)(K)(ii) of this title, and any child of such a nonimmigrant who was admitted as accompanying, or following to join, such a nonimmigrant, the period of authorized admission shall terminate 30 days after the date on which any of the following is denied:

(A) The petition filed under section 1154 of this title to accord the principal alien status under section 1151(b)(2)(A)(i) of this title.

(B) The principal alien's application for an immigrant visa pursuant to the approval of such petition.

(C) The principal alien's application for adjustment of status under section 1255 of this title pursuant to the approval of such petition.

(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiancé(e)s and spouses under clauses (i) and (ii) of section 1101(a)(15)(K) of this title. Upon approval of a second visa petition under section 1101(a)(15)(K) of this title for a fiancé(e) or spouse filed by the same United States citizen petitioner, the petitioner shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiancé(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

(B)(i) Once a petitioner has had two fiancé(e) or spousal petitions approved under clause (i) or (ii) of section 1101(a)(15)(K) of this title, if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiancé(e) or spousal petitions listed in the database.

(ii) A copy of the information and resources pamphlet on domestic violence developed under

section 1375a(a) of this title shall be mailed to the beneficiary along with the notification required in clause (i).

(5) In this subsection:

(A) The terms ''domestic violence'', ''sexual assault'', ''child abuse and neglect'', ''dating violence'', ''elder abuse'', and ''stalking'' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.[3]

(B) The term ''specified crime'' means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(June 27, 1952, ch. 477, title II, ch. 2, §214, 66 Stat. 189; Pub. L. 91–225, §3, Apr. 7, 1970, 84 Stat. 117; Pub. L. 98–454, title VI, §602(b), Oct. 5, 1984, 98 Stat. 1737; Pub. L. 99–603, title III, §§301(b), 313(b), Nov. 6, 1986, 100 Stat. 3411, 3438; Pub. L. 99–639, §3(a), (c), Nov. 10, 1986, 100 Stat. 3542; Pub. L. 100–449, title III, §307(b), Sept. 28, 1988, 102 Stat. 1877; Pub. L. 100–525, §2(*l*)(1), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–649, title II, §§202(a), 205(a), (b), (c)(2), 206(b), 207(b), Nov. 29, 1990, 104 Stat. 5014, 5019, 5020, 5023, 5025; Pub. L. 102–232, title II, §§202(a), 203(b), 204, 205(d), (e), 206(a), (c)(2), 207(a), (c)(1), title III, §303(a)(10)–(12), Dec. 12, 1991, 105 Stat. 1737–1741, 1748; Pub. L. 103–182, title III, §341(b), (c), Dec. 8, 1993, 107 Stat. 2116, 2117; Pub. L. 103–322, title XIII, §130003(b)(2), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 103–416, title II, §220(b), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. C, title III, §308(e)(1)(D), (2)(B), (f)(1)(G), (H), (3)(B), (g)(5)(A)(i), (7)(A), title VI, §§621, 622(c), 625(a)(1), 671(a)(3)(A), (e)(4)(A), Sept. 30, 1996, 110 Stat. 3009–619 to 3009–621, 3009–623, 3009–695, 3009–699, 3009–721, 3009–723; Pub. L. 105–65, title I, §108, Oct. 27, 1997, 111 Stat. 1350; Pub. L. 105–277, div. C, title IV, §§411(a), 414(a), Oct. 21, 1998, 112 Stat. 2681–642, 2681–651; Pub. L. 106–104, §2, Nov. 13, 1999, 113 Stat. 1483; Pub. L. 106–311, §1, Oct. 17, 2000, 114 Stat. 1247; Pub. L. 106–313, title I, §§102(a), 103, 105(a), 108, Oct. 17, 2000, 114 Stat. 1251–1253, 1255; Pub. L. 106–386, div. A, §107(e)(2), div. B, title V, §1513(c), Oct. 28, 2000, 114 Stat. 1478, 1535; Pub. L. 106–396, title IV, §401, Oct. 30, 2000, 114 Stat. 1647; Pub. L. 106–553, §1(a)(2) [title XI, §§1102(b), (d)(1), 1103(b), (c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–142, 2762A–144, 2762A–145; Pub. L. 107–45, §1, Oct. 1, 2001, 115 Stat. 258; Pub. L. 107–124, Jan. 16, 2002, 115 Stat. 2402; Pub. L. 107–125, §§1, 2(a), Jan. 16, 2002, 115 Stat. 2403; Pub. L. 107–273, div. C, title I, §11018(a), Nov. 2, 2002, 116 Stat. 1825; Pub. L. 107–274, §2(c), Nov. 2, 2002, 116 Stat. 1923; Pub. L. 108–77, title IV, §§402(a)(2), (d)(1), 403, 404, Sept. 3, 2003, 117 Stat. 940, 946, 947; Pub. L. 108–78, title IV, §402, Sept. 3, 2003, 117 Stat. 970; Pub. L. 108–193, §§4(b)(2), 8(a)(3), Dec. 19, 2003, 117 Stat. 2878, 2886; Pub. L. 108–441, §1(b)–(d), Dec. 3, 2004, 118 Stat. 2630; Pub. L. 108–447, div. J, title IV, §§412(a), 413(a), 422(b), 425(a) 426(a), Dec. 8, 2004, 118 Stat. 3351–3353, 3356, 3357; Pub. L. 109–13, div. B, title IV, §§402(a), 403(a), 404(a), 405, title V, §501(b), (c), May 11, 2005, 119 Stat. 318–322; Pub. L. 109–162, title VIII, §§821(a), (b), (c)(2), 832(a)(1),(2), Jan. 5, 2006, 119 Stat. 3062, 3066, 3067; Pub. L. 109–364, div. A, title X, §1074(a), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 109–463, §2, Dec. 22, 2006, 120 Stat. 3477; Pub. L. 110–229, title VII, §702(b)(1), May 8, 2008, 122 Stat. 860; Pub. L. 110–362, §2, Oct. 8, 2008, 122 Stat. 4013; Pub. L. 110–457, title II, §201(b), (c), Dec. 23, 2008, 122 Stat. 5053.)

[3] See References in Text note below.

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendment note below.

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

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (b), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, referred to in subsecs. (d)(3)(A) and (r)(5)(A), is section 3 of Pub. L. 109–162, which enacted sections 3796gg–2 and 13925 of Title 42, The Public Health and Welfare, amended sections 3796gg–3, 3796hh–4, 10420, 13975, and 14039 of Title 42, repealed former section 3796gg–2 of Title 42, and amended provisions set out as a note under section 3796gg–2 of Title 42.

CODIFICATION

In subsec. (f)(1), ''section 116 of title 46'' substituted for ''section 2101(46) of title 46, United States Code'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, section 4 of which enacted subtitle I of Title 46, Shipping.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–229 substituted ''Guam or the Commonwealth of the Northern Mariana Islands'' for ''Guam'' wherever appearing and substituted ''45 days'' for ''fifteen days''.

Subsec. (*l*)(1)(D)(ii). Pub. L. 110–362 substituted ''10'' for ''5''.

Subsec. (*o*)(7)(B). Pub. L. 110–457, §201(b)(1), inserted dash after ''if'', designated remainder of existing provisions as cl. (i), and added cls. (ii) and (iii).

Subsec. (*o*)(7)(C). Pub. L. 110–457, §201(b)(2), added subpar. (C).

Subsec. (p)(6). Pub. L. 110–457, §201(c), inserted at end ''The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title and is unable to obtain such relief because

regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.''

2006—Subsec. (c)(4)(A)(i), (ii). Pub. L. 109–463, § 2(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and

''(ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.''

Subsec. (c)(4)(F) to (H). Pub. L. 109–463, § 2(b)–(d), added subpars. (F) to (H).

Subsec. (d). Pub. L. 109–162, § 832(a)(1), designated existing provisions as par. (1), inserted after second sentence ''Such information shall include information on any criminal convictions of the petitioner for any specified crime.'', substituted ''Secretary of Homeland Security'' for ''Attorney General'' wherever appearing, and added pars. (2) and (3).

Subsec. (g)(9)(A). Pub. L. 109–364, § 1074(a)(1), substituted ''Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007'' for ''Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the fiscal year of the approved start date of a petition for a nonimmigrant worker described in section 1101(a)(15)(H)(ii)(b) of this title shall not be counted toward such limitation for the fiscal year in which the petition is approved''.

Subsec. (g)(9)(B). Pub. L. 109–364, § 1074(a)(2), substituted ''to admit or otherwise provide status under section 1101(a)(15)(H)(ii)(b) of this title'' for ''referred to in subparagraph (A)'' in introductory provisions.

Subsec. (*l*)(2)(A). Pub. L. 109–162, § 821(c)(2), substituted ''1258(a)(2)'' for ''1258(2)''.

Subsec. (*o*)(7). Pub. L. 109–162, § 821(a), added par. (7).

Subsec. (p)(6). Pub. L. 109–162, § 821(b), added par. (6).

Subsec. (r)(1). Pub. L. 109–162, § 832(a)(2)(A), inserted at end ''Such information shall include information on any criminal convictions of the petitioner for any specified crime.''

Subsec. (r)(4), (5). Pub. L. 109–162, § 832(a)(2)(B), added pars. (4) and (5).

2005—Subsec. (c)(13). Pub. L. 109–13, § 403(a), added par. (13).

Subsec. (c)(14). Pub. L. 109–13, § 404(a), added par. (14).

Subsec. (g)(9). Pub. L. 109–13, § 402(a), added par. (9).

Subsec. (g)(10). Pub. L. 109–13, § 405, added par. (10).

Subsec. (g)(11). Pub. L. 109–13, § 501(b), added par. (11).

Subsec. (i)(1). Pub. L. 109–13, § 501(c), inserted '', section 1101(a)(15)(E)(iii) of this title,'' after ''section 1101(a)(15)(H)(i)(b) of this title'' in introductory provisions.

2004—Subsec. (c)(2)(A). Pub. L. 108–447, § 413(a), struck out at end ''In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.''

Subsec. (c)(2)(F). Pub. L. 108–447, § 412(a), added subpar. (F).

Subsec. (c)(9)(A). Pub. L. 108–447, § 422(b)(1), struck out ''October 1, 2003'' before ''a petition under paragraph (1)'' in introductory provisions.

Subsec. (c)(9)(B). Pub. L. 108–447, § 422(b)(2), (3), substituted ''$1,500'' for ''$1,000'' and inserted before period at end ''except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)''.

Subsec. (c)(12). Pub. L. 108–447, § 426(a), added par. (12).

Subsec. (g)(5). Pub. L. 108–447, § 425(a)(1), struck out ''is employed (or has received an offer of employment) at'' after ''section 1101(a)(15)(H)(i)(b) of this title who'' in introductory provisions.

Subsec. (g)(5)(A). Pub. L. 108–447, § 425(a)(2), inserted ''is employed (or has received an offer of employment) at'' before ''an institution'' and struck out ''or'' at end.

Subsec. (g)(5)(B). Pub. L. 108–447, § 425(a)(3), inserted ''is employed (or has received an offer of employment) at'' before ''a nonprofit'' and substituted ''; or'' for period at end.

Subsec. (g)(5)(C). Pub. L. 108–447, § 425(a)(4), added subpar. (C).

Subsec. (*l*)(1)(D). Pub. L. 108–441, § 1(c), (d), substituted ''agrees to practice primary care or specialty medicine'' for ''agrees to practice medicine'' and ''except that—'' for ''except that, in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary.'' and added cls. (i) to (iii).

Subsec. (*l*)(2)(A). Pub. L. 108–441, § 1(b), inserted at end ''The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.''

2003—Subsec. (b). Pub. L. 108–77, §§ 107(c), 404(1), temporarily substituted ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section)'' for ''(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 1101(a)(15) of this title)''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(1). Pub. L. 108–77, §§ 107(c), 404(2), temporarily substituted ''subparagraph (H), (L), (O), or (P)(i) of section 1101(a)(15) of this title (excluding nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title)'' for ''section 1101(a)(15)(H), (L), (O), or (P)(i) of this title''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(11). Pub. L. 108–77, §§ 107(c), 402(d)(1), temporarily added par. (11). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8). Pub. L. 108–77, §§ 107(c), 402(a)(2)(B), temporarily added par. (8). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8)(A). Pub. L. 108–78, §§ 107(c), 402(1), temporarily amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The agreement referred to in section 1101(a)(15)(H)(i)(b1) of this title is the United States-Chile Free Trade Agreement.'' See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g)(8)(B)(ii). Pub. L. 108–78, §§ 107(c), 402(2), temporarily amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The annual numerical limitations described in clause (i) shall not exceed 1,400 for nationals of Chile for any fiscal year. For purposes of this clause, the term 'national' has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.'' See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (h). Pub. L. 108–77, §§ 107(c), 404(3), temporarily substituted ''(H)(i)(b) or (c)'' for ''(H)(i)''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (i)(1). Pub. L. 108–77, §§ 107(c), 402(a)(2)(A)(i), temporarily substituted ''Except as provided in paragraph (3), for purposes'' for ''For purposes''. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (i)(3). Pub. L. 108–77, §§ 107(c), 402(a)(2)(A)(ii), temporarily added par. (3). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (j). Pub. L. 108–77, §§ 107(c), 403, temporarily designated existing provisions as par. (1), substituted ''this paragraph'' for ''this subsection'' in two places, and added par. (2). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (m). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (m), relating to increased portability of H–1B status, as (n).

Subsec. (n). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (m), relating to increased portability of H–1B status, as (n). Former subsec. (n), relating to nonimmigrants guilty of trafficking in persons, redesignated (*o*).

Subsec. (n)(3). Pub. L. 108–193, § 4(b)(2)(A), inserted ''siblings,'' before ''or parents''.

Subsec. (n)(4) to (6). Pub. L. 108–193, § 4(b)(2)(B), added pars. (4) to (6).

Subsec. (*o*). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (n) as (*o*). Former subsec. (*o*), relating to requirements applicable to section 1101(a)(15)(U) visas, redesignated (p). Another former subsec. (*o*), relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title, redesignated (q).

Subsec. (p). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (*o*), relating to requirements applicable to section 1101(a)(15)(U) visas, as (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (*o*), relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title, as (q).

Subsec. (r). Pub. L. 108–193, § 8(a)(3), redesignated subsec. (p) as (r).

2002—Subsec. (c)(2)(A). Pub. L. 107–125, § 2(a), inserted at end ''In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.''

Subsec. (c)(2)(E). Pub. L. 107–125, § 1, added subpar. (E).

Subsec. (e)(6). Pub. L. 107–124 added par. (6).

Subsec. (*l*)(1)(B). Pub. L. 107–273 substituted ''30;'' for ''20;''.

Subsec. (m). Pub. L. 107–274 substituted ''clause (i) or (iii) of section 1101(a)(15)(F)'' for ''section 1101(a)(15)(F)(i)'' in two places in subsec. (m) relating to nonimmigrant elementary and secondary school students.

2001—Subsec. (k)(2). Pub. L. 107–45, § 1(2), redesignated par. (3) as (2).

Pub. L. 107–45, § 1(1), which directed that subsec. (k) be amended by striking (2), was executed by striking par. (2) to reflect the probable intent of Congress. Prior to amendment, par. (2) read as follows: ''No alien may be admitted into the United States as such a nonimmigrant more than 7 years after September 13, 1994.''

Subsec. (k)(3). Pub. L. 107–45, § 1(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (k)(4). Pub. L. 107–45, § 1(2), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (k)(4)(E). Pub. L. 107–45, § 1(3), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (k)(5). Pub. L. 107–45, § 1(2), redesignated par. (5) as (4).

2000—Subsec. (b). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(1)], substituted ''(H)(i), (L), or (V)'' for ''(H)(i) or (L)''.

Subsec. (c)(9)(A). Pub. L. 106–311, § 1(1), substituted ''(excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before October 1, 2003'' for ''(excluding an employer described in subparagraph (A) or (B) of section 1182(p)(1) of this title) filing (on or after December 1, 1998, and before October 1, 2001)''.

Subsec. (c)(9)(B). Pub. L. 106–311, § 1(2), substituted ''$1,000'' for ''$500''.

Subsec. (c)(10). Pub. L. 106–396 added par. (10).

Subsec. (d). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(1)], substituted ''1101(a)(15)(K)(i)'' for ''1101(a)(15)(K)''.

Subsec. (g)(1)(A)(iv) to (vii). Pub. L. 106–313, § 102(a), added cls. (iv) to (vi), redesignated former cl. (v) as (vii), and struck out former cl. (iv) which read as follows: ''107,500 in fiscal year 2001; and''.

Subsec. (g)(3). Pub. L. 106–313, § 108, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.''

Subsec. (g)(5) to (7). Pub. L. 106–313, § 103, added pars. (5) to (7).

Subsec. (h). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(1)], substituted ''(H)(i), (L), or (V)'' for ''(H)(i) or (L)''.

Subsec. (*l*). Pub. L. 106–386, § 107(e)(2)(A), redesignated subsec. (*l*), relating to nonimmigrant elementary and secondary school students, as (m).

Subsec. (m). Pub. L. 106–386, § 107(e)(2)(A), redesignated subsec. (*l*), relating to nonimmigrant elementary and secondary school students, as (m).

Pub. L. 106–313, § 105(a), added subsec. (m) relating to increased portability of H–1B status.

Subsec. (n). Pub. L. 106–386, § 107(e)(2)(B), added subsec. (n).

Subsec. (*o*). Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(b)], added subsec. (*o*) relating to employment of nonimmigrants described in section 1101(a)(15)(V) of this title.

Pub. L. 106–386, § 1513(c), added subsec. (*o*) relating to requirements applicable to section 1101(a)(15)(U) visas.

Subsec. (p). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(b)], added subsec. (p).

1999—Subsec. (k)(2). Pub. L. 106–104 substituted ''7 years'' for ''5 years''.

1998—Subsec. (c)(9). Pub. L. 105–277, § 414(a), added par. (9).

Subsec. (g)(1)(A). Pub. L. 105–277, § 411(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''under section 1101(a)(15)(H)(i)(b) of this title may not exceed 65,000, or''.

1997—Subsec. (*l*)(1)(D). Pub. L. 105–65 inserted before period at end '', except that, in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary''.

1996—Subsec. (c)(2)(A). Pub. L. 104–208, § 308(f)(1)(G), substituted ''admission'' for ''entry''.

Subsec. (c)(5)(B). Pub. L. 104–208, § 308(f)(3)(B), substituted ''is admitted to'' for ''enters''.

Subsec. (d). Pub. L. 104–208, § 308(g)(5)(A)(i), (7)(A), substituted ''sections 1229a and 1231'' for ''sections 1252 and 1253''.

Pub. L. 104–208, § 308(f)(1)(H), substituted ''admission'' for ''entry''.

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

Subsec. (f)(1). Pub. L. 104–208, § 671(e)(4)(A), substituted ''section 40102(a)(2) of title 49'' for ''section 101(3) of the Federal Aviation Act of 1958''.

Subsec. (j). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k).

Subsec. (j)(1). Pub. L. 104–208, § 621, substituted ''200'' for ''100'' and ''50'' for ''25''.

Subsec. (k). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k). Former (k) redesignated (*l*).

Pub. L. 104–208, § 622(c), amended subsec. (k) generally, substituting provisions relating to requests by interested State and Federal agencies for waivers of the two-year foreign residence requirement under section 1182(e) of this title for former provisions relating to requests by interested State agencies for such waivers.

Subsec. (k)(4)(C). Pub. L. 104–208, § 308(e)(1)(D), amended subsec. (k)(4)(C), as redesignated by Pub. L. 104–208, § 671(a)(3)(A), by substituting ''removal'' for ''deportation''.

Subsec. (*l*). Pub. L. 104–208, § 671(a)(3)(A), redesignated subsec. (k) as (*l*).

Pub. L. 104–208, § 625(a)(1), added subsec. (*l*) relating to nonimmigrant elementary and secondary school students.

1994—Subsec. (j). Pub. L. 103–322 added subsec. (j) relating to numerical limitations on the number of aliens provided with nonimmigrant visas.

Subsec. (k). Pub. L. 103–416 added subsec. (k).

1993—Subsec. (e). Pub. L. 103–182, § 341(b), designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (j). Pub. L. 103–182, § 341(c), added subsec. (j).

1991—Subsec. (a)(2)(A). Pub. L. 102–232, § 303(a)(11), substituted ''described in section 1101(a)(15)(O)'' for ''under section 1101(a)(15)(O)''.

Pub. L. 102–232, § 205(d), inserted ''(or events)'' after ''event''.

Subsec. (a)(2)(B). Pub. L. 102–232, § 206(a), designated cl. (i) as subpar. (B) and struck out cl. (ii) which read as follows: ''An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 1101(a)(15)(P) of this title may not be readmitted as such a nonimmigrant unless the alien has remained outside the United States for at least 3 months after the date of the most recent admission. The Attorney General may waive the application of the previous sentence in the case of individual tours in which the application would work an undue hardship.''

Subsec. (c)(2)(A). Pub. L. 102–232, § 303(a)(10)(A), substituted ''individual petitions'' for ''individuals petitions''.

Subsec. (c)(2)(D). Pub. L. 102–232, § 303(a)(10)(B), substituted ''involves'' for ''involved''.

Subsec. (c)(3). Pub. L. 102–232, § 205(e), inserted at end ''The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.''

Subsec. (c)(3)(A). Pub. L. 102–232, § 204(1), substituted ''after consultation in accordance with paragraph (6)'' for ''after consultation with peer groups in the area of the alien's ability''.

Subsec. (c)(3)(B). Pub. L. 102–232, § 204(2), substituted ''after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien's ability'' for ''after consultation with labor organizations with expertise in the skill area involved''.

Subsec. (c)(4)(A), (B). Pub. L. 102–232, § 203(b), added subpars. (A) and (B) and redesignated former subpars. (A) and (B) as (C) and (D), respectively.

Subsec. (c)(4)(C). Pub. L. 102–232, § 204(3), struck out ''clause (ii) of'' after ''under''.

Pub. L. 102–232, § 203(b), redesignated subpar. (A) as (C). Former subpar. (C) redesignated (E).

Subsec. (c)(4)(D). Pub. L. 102–232, § 204(4), substituted ''after consultation in accordance with paragraph (6)'' for ''after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved''.

Pub. L. 102–232, § 203(b), redesignated subpar. (B) as (D).

Subsec. (c)(4)(E). Pub. L. 102–232, § 206(c)(2), struck out before period at end '', in order to assure reciprocity in fact with foreign states''.

Pub. L. 102–232, § 203(b), redesignated subpar. (C) as (E).

Subsec. (c)(5). Pub. L. 102–232, § 207(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(5)(A). Pub. L. 102–232, § 303(a)(12), substituted ''1101(a)(15)(H)(ii)(b)'' for ''1101(H)(ii)(b)''.

Subsec. (c)(6), (7). Pub. L. 102–232, § 204(5), (6), added par. (6) and redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 102–232, § 207(c)(1), added par. (8).

Subsec. (g)(1). Pub. L. 102–232, § 202(a), inserted ''or'' at end of subpar. (A), substituted a period for '', or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''under section 1101(a)(15)(P)(i) or section 1101(a)(15)(P)(iii) of this title may not exceed 25,000.''

1990—Subsec. (a). Pub. L. 101–649, § 207(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–649, § 205(b)(1), inserted ''(other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 1101(a)(15) of this title)'' after ''Every alien''.

Subsec. (c). Pub. L. 101–649, §§ 206(b), 207(b)(2)(B), designated existing provisions as par. (1), substituted reference to section 1101(a)(15)(H), (L), (O), or (P)(i) of this title for reference to section 1101(a)(15)(H) or (L) of this title, and added pars. (2) to (6).

Subsec. (f). Pub. L. 101–649, § 202(a), added subsec. (f).

Subsecs. (g) to (i). Pub. L. 101–649, § 205(a), (b)(2), (c)(2), added subsecs. (g) to (i).

1988—Subsec. (c). Pub. L. 100–525, § 2(*l*)(1), amended Pub. L. 99–603, § 301(b). See 1986 Amendment note below.

Subsec. (e). Pub. L. 100–449 added subsec. (e).

1986—Subsec. (a). Pub. L. 99–603, § 313(b), inserted provision directing that no alien admitted without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

Subsec. (c). Pub. L. 99–603, § 301(b), as amended by Pub. L. 100–525, § 2(*l*)(1), inserted provisions relating to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title.

Subsec. (d). Pub. L. 99–639, § 3(a), substituted ''have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry,'' for ''have a bona fide intention to marry'', and inserted '', except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person''.

Pub. L. 99–639, § 3(c), struck out last sentence which read: ''In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.''

1984—Subsec. (a). Pub. L. 98–454 inserted ''No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam.''

1970—Subsec. (c). Pub. L. 91–225, § 3(a), inserted reference to subpar. (L) of section 1101(a)(15) of this title.

Subsec. (d). Pub. L. 91–225, § 3(b), added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–457 effective Dec. 23, 2008, and applicable to applications for immigration benefits filed on or after Dec. 23, 2008, see section 201(f) of Pub. L. 110–457, set out as a note under section 1101 of this title.

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 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1074(c), Oct. 17, 2006, 120 Stat. 2403, provided that: ''The amendments made

by this section [amending this section and provisions set out as a note under this section] shall take effect on October 1, 2006. If this section is enacted after October 1, 2006, the amendments made by this section shall take effect as if enacted on such date.''

Pub. L. 109–162, title VIII, §832(a)(3), Jan. 5, 2006, 119 Stat. 3068, provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Jan. 5, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title IV, §402(b), May 11, 2005, 119 Stat. 318, as amended by Pub. L. 109–364, div. A, title X, §1074(b), Oct. 17, 2006, 120 Stat. 2403, provided that:

''(1) IN GENERAL.—The amendment in subsection (a) [amending this section] shall take effect as if enacted on October 1, 2004.

''(2) IMPLEMENTATION.—Not later than 14 days after the date of the enactment of this Act [May 11, 2005], the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(b)], in a manner consistent with this section [amending this section] and the amendments made by this section. Notwithstanding section 214(g)(9)(B) of such Act [8 U.S.C. 1184(g)(9)(B)], as added by subsection (a), the Secretary of Homeland Security shall allocate additional numbers for fiscal year 2005 based on statistical estimates and projections derived from Department of State data.''

Pub. L. 109–13, div. B, title IV, §403(c), May 11, 2005, 119 Stat. 319, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1356 of this title] shall take effect 14 days after the date of the enactment of this Act [May 11, 2005] and shall apply to filings for a fiscal year after fiscal year 2005.''

Pub. L. 109–13, div. B, title IV, §404(b), May 11, 2005, 119 Stat. 320, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. J, title IV, §412(b), Dec. 8, 2004, 118 Stat. 3352, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions filed on or after the effective date of this subtitle [subtitle A, effective 180 days after Dec. 8, 2004, see below], whether for initial, extended, or amended classification.''

Pub. L. 108–447, div. J, title IV, §413(b), Dec. 8, 2004, 118 Stat. 3352, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to petitions for initial classification filed on or after the effective date of this subtitle [subtitle A, effective 180 days after Dec. 8, 2004, see below].''

Pub. L. 108–447, div. J, title IV, §417, Dec. 8, 2004, 118 Stat. 3353, provided that: ''This subtitle [subtitle A (§§411–417) of title IV of div. J of Pub. L. 108–447, enacting section 1380 of this title, amending this section, and enacting provisions set out as notes under this section and section 1101 of this title] and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act [Dec. 8, 2004].''

Amendment by sections 422(b) and 426(a) of Pub. L. 108–447 effective Dec. 8, 2004, and amendment by section 425(a) of Pub. L. 108–447 effective 90 days after Dec. 8, 2004, see section 430 of Pub. L. 108–447, set out as a note under section 1182 of this title.

Pub. L. 108–447, div. J, title IV, §426(c), Dec. 8, 2004, 118 Stat. 3358, provided that: ''The amendments made by this section [amending this section and section 1356 of this title] shall take effect on the date of enactment of this Act [Dec. 8, 2004], and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act [8 U.S.C. 1184(c)], and applications for nonimmigrant visas under section 222 of such Act [8 U.S.C. 1202], filed on or after the date that is 90 days after the date of the enactment of this Act.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–78, set out in a note under section 3805 of Title 19, Customs Duties.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out as a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective as if enacted May 31, 2002, see section 11018(d) of Pub. L. 107–273, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by section 1(a)(2) [title XI, §1102(b), (d)(1)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(e)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Amendment by section 1(a)(2) [title XI, §1103(b), (c)(1)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, §1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Pub. L. 106–313, title I, §105(b), Oct. 17, 2000, 114 Stat. 1253, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions filed before, on, or after the date of enactment of this Act [Oct. 17, 2000].''

Pub. L. 106–311, §2, Oct. 17, 2000, 114 Stat. 1247, provided that: ''The amendment made by section 1(2) [amending this section] shall apply only to petitions that are filed on or after the date that is 2 months after the date of the enactment of this Act [Oct. 17, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IV, §411(b), Oct. 21, 1998, 112 Stat. 2681–642, provided that: ''The amendment made by subsection (a) [amending this section] applies beginning with fiscal year 1999.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(1)(D), (2)(B), (f)(1)(G), (H), (3)(B), (g)(5)(A)(i), (7)(A) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 625(a)(1) of Pub. L. 104–208 applicable to individuals who obtain status of nonimmigrant under section 1101(a)(15)(F) of this title after end of 60-day period beginning Sept. 30, 1996, including aliens whose status as such a nonimmigrant is extended after end of such period, see section 625(c) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 671(a)(3)(A) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 applicable to aliens admitted to United States under section 1101(a)(15)(J)

of this title, or acquiring such status after admission to United States, before, on, or after Oct. 25, 1994, and before June 1, 2008, see section 220(c) of Pub. L. 103–416, as amended, set out as an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 342 of Pub. L. 103–182, set out as a note under section 3401 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 202(a), 203(b), 204, 205(d), (e), 206(a), (c)(2), 207(a), (c)(1) of Pub. L. 102–232 effective Apr. 1, 1992, see section 208 of Pub. L. 102–232, set out as a note under section 1101 of this title.

Amendment by section 303(a)(10)–(12) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 202(a) of Pub. L. 101–649 effective 60 days after Nov. 29, 1990, see section 202(c) of Pub. L. 101–649, set out as a note under section 1182 of this title.

Amendment by sections 205(a), (b), (c)(2), 206(b), and 207(b) of Pub. L. 101–649 effective Oct. 1, 1991, see section 231 of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as an Effective Date of 1988 Amendment note under section 1101 of this title.

Amendment by Pub. L. 100–449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 3(d)(1), (3) of Pub. L. 99–639 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply to petitions approved on or after the date of the enactment of this Act [Nov. 10, 1986].

''(3) The amendment made by subsection (c) [amending this section] shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(K)] on or after the date of the enactment of this Act.''

Amendment by section 301(b) of Pub. L. 99–603 applicable to petitions and applications filed under sections 1184(c) and 1188 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub. L. 99–603, as amended, set out as an Effective Date note under section 1188 of this title.

TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22, Foreign Relations and Intercourse.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

LIMITATION ON USE OF CERTAIN INFORMATION

Pub. L. 109–162, title VIII, § 832(b), Jan. 5, 2006, 119 Stat. 3068, provided that: ''The fact that an alien described in clause (i) or (ii) of section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is aware of any information disclosed under the amendments made by this section [amending this section] or under section 833 [enacting section 1375a of this title and repealing section 1375 of this title] shall not be used to deny the alien eligibility for relief under any other provision of law.''

EXEMPTION FROM ADMINISTRATIVE PROCEDURE ACT

Pub. L. 109–13, div. B, title IV, § 407, May 11, 2005, 119 Stat. 321, provided that: ''The requirements of chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act') or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement sections 402, 403, and 405 [amending this section and section 1356 of this title and enacting provisions set out as notes under this section] or the amendments made by such sections to the extent the Secretary Homeland of Security, the Secretary of Labor, or the Secretary of State determine that compliance with any such requirement would impede the expeditious implementation of such sections or the amendments made by such sections.''

L VISA INTERAGENCY TASK FORCE AND INSPECTOR GENERAL REPORT

Pub. L. 108–447, div. J, title IV, §§ 415, 416, Dec. 8, 2004, 118 Stat. 3352, provided that:

''SEC. 415. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

''Not later than 6 months after the date of enactment of this Act [Dec. 8, 2004], the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

''SEC. 416. ESTABLISHMENT OF TASK FORCE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act [Dec. 8, 2004], there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

''(b) REPORT.—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6 [probably means section 415 of div. J. of Pub. L. 108–447], the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General's report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General's report or by the Task Force's own deliberations regarding the policies and purposes of the visa

program relative to national goals and transnational commerce.''

STATISTICAL INFORMATION ON COUNTRY OF ORIGIN, OCCUPATION, EDUCATIONAL LEVEL AND COMPENSATION

Pub. L. 108–447, div. J, title IV, § 425(b), Dec. 8, 2004, 118 Stat. 3356, provided that: ''Beginning on the date of enactment of this Act [Dec. 8, 2004], the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277; 112 Stat. 2681–655) [set out below].''

ADDITIONAL VISAS FOR FISCAL YEARS 1999 AND 2000

Pub. L. 106–313, title I, § 102(b), Oct. 17, 2000, 114 Stat. 1251, provided that:

''(1) IN GENERAL.—(A) Notwithstanding section 214(g)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)(ii)), the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] in fiscal year 1999 is increased by a number equal to the number of aliens who are issued such a visa or provided such status during the period beginning on the date on which the limitation in such section 214(g)(1)(A)(ii) is reached and ending on September 30, 1999.

''(B) In the case of any alien on behalf of whom a petition for status under section 101(a)(15)(H)(i)(b) is filed before September 1, 2000, and is subsequently approved, that alien shall be counted toward the numerical ceiling for fiscal year 2000 notwithstanding the date of the approval of the petition. Notwithstanding section 214(g)(1)(A)(iii) of the Immigration and Nationality Act, the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act in fiscal year 2000 is increased by a number equal to the number of aliens who may be issued visas or otherwise provided nonimmigrant status who filed a petition during the period beginning on the date on which the limitation in such section 214(g)(1)(A)(iii) is reached and ending on August 31, 2000.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if included in the enactment of section 411 of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277) [see Effective Date of 1998 Amendment note above].''

ONE-TIME PROTECTION UNDER PER COUNTRY CEILING

Pub. L. 106–313, title I, § 104(c), Oct. 17, 2000, 114 Stat. 1253, provided that: ''Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)), any alien who—

''(1) is the beneficiary of a petition filed under section 204(a) of that Act [8 U.S.C. 1154(a)] for a preference status under paragraph (1), (2), or (3) of section 203(b) of that Act [8 U.S.C. 1153(b)]; and

''(2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.''

SPECIAL PROVISIONS IN CASES OF LENGTHY ADJUDICATIONS

Pub. L. 106–313, title I, § 106(a), (b), Oct. 17, 2000, 114 Stat. 1253, 1254, as amended by Pub. L. 107–273, div. C, title I, § 11030A, Nov. 2, 2002, 116 Stat. 1836, provided that:

''(a) EXEMPTION FROM LIMITATION.—The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

''(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. 1153(b)).

''(2) A petition described in section 204(b) of such Act (3 U.S.C. 1154(b)) [8 U.S.C. 1154(b)] to accord the alien a status under section 203(b) of such Act.

''(b) EXTENSION OF H–1B WORKER STATUS.—The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

''(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

''(2) to deny the petition described in subsection (a)(2); or

''(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.''

EXCLUSION OF CERTAIN ''J'' NONIMMIGRANTS FROM NUMERICAL LIMITATIONS APPLICABLE TO ''H–1B'' NONIMMMIGRANTS

Pub. L. 106–313, title I, § 114, Oct. 17, 2000, 114 Stat. 1262, provided that: ''The numerical limitations contained in section 102 of this title [amending this section and enacting provisions set out as a note above] shall not apply to any nonimmigrant alien granted a waiver that is subject to the limitation contained in paragraph (1)(B) of the first section 214(*l*) of the Immigration and Nationality Act [8 U.S.C. 1184(*l*)] (relating to restrictions on waivers).''

IMPROVING COUNT OF H–1B AND H–2B NONIMMIGRANTS

Pub. L. 105–277, div. C, title IV, § 416, Oct. 21, 1998, 112 Stat. 2681–655, as amended by Pub. L. 109–13, div. B, title IV, § 406, May 11, 2005, 119 Stat. 320, provided that:

''(a) ENSURING ACCURATE COUNT.—The Secretary of Homeland Security shall take such steps as are necessary to maintain an accurate count of the number of aliens subject to the numerical limitations of section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

''(b) REVISION OF PETITION FORMS.—The Secretary of Homeland Security shall take such steps as are necessary to revise the forms used for petitions for visas or nonimmigrant status under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) so as to ensure that the forms provide the Secretary of Homeland Security with sufficient information to permit the Secretary of Homeland Security accurately to count the number of aliens subject to the numerical limitations of section 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

''(c) PROVISION OF INFORMATION.—

''(1) QUARTERLY NOTIFICATION.—Beginning not later than 60 days after the first day of fiscal year 1999, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committees on the Judiciary of the United States House of Representatives and the Senate of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Na-

tionality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] during the preceding 3-month period.

''(2) ANNUAL SUBMISSION.—Beginning with fiscal year 2000, the Secretary of Homeland Security shall submit on an annual basis, to the Committees on the Judiciary of the United States House of Representatives and the Senate, information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] during the previous fiscal year. With respect to the first submission under this paragraph, the information shall relate solely to aliens provided nonimmigrant status after the date that is 60 days after the date on which final regulations are issued to carry out section 412(a) [amending section 1182 of this title].

''(3) SPECIFICATION OF NUMBER OF PETITIONS FILED BY CERTAIN EMPLOYERS.—Each notification under paragraph (1), and each submission under paragraph (2), shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act [8 U.S.C. 1182(p)(1)] (as added by section 415 of this title).

''(d) PROVISION OF INFORMATION.—

''(1) SEMIANNUAL NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who during the preceding 1-year period—

''(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

''(B) had such a visa or such status be revoked or otherwise terminated.

''(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

''(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

''(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

''(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

''(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.''

REPORTING ON STUDIES SHOWING ECONOMIC IMPACT OF H–1B NONIMMIGRANT INCREASE

Pub. L. 105–277, div. C, title IV, § 418(b), Oct. 21, 1998, 112 Stat. 2681–657, provided that: ''The Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chair of the Council of Economic Advisers, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and any other member of the Cabinet, shall promptly report to the Congress the results of any reliable study that suggests, based on legitimate economic analysis, that the increase effected by section 411(a) of this title [amending this section] in the number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)] has had an impact on any national economic indicator, such as the level of inflation or unemployment, that warrants action by the Congress.''

DEADLINE FOR FIRST REPORT WITH RESPECT TO PETITIONS

Section 207(c)(2) of Pub. L. 102–232 provided that: ''The first report under section 214(c)(8) of the Immigration and Nationality Act [8 U.S.C. 1184(c)(8)] shall be provided not later than April 1, 1993.''

DELAY UNTIL APRIL 1, 1992, IN APPLICATION OF SUBSECTION (g)(1)(C) OF THIS SECTION

See section 3 of Pub. L. 102–110, set out as a Delay Until April 1, 1992, in Implementation of Provisions Relating to Nonimmigrant Artists, Athletes, Entertainers, and Fashion Models note under section 1101 of this title.

WORK AUTHORIZATION DURING PENDING LABOR DISPUTES

Section 207(c) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 303(a)(13), Dec. 12, 1991, 105 Stat. 1748, provided that:

''(1) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a)]) and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act [Nov. 29, 1990] the alien—

''(A) continues to be authorized to be employed in the occupation for that employer, and

''(B) is authorized to be employed in any occupation for any other employer so long as such strike or lockout continues with respect to that occupation and employer.

''(2) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act) and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act the alien—

''(A) is not authorized to be employed in the occupation for that employer, and

''(B) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

''(3) With respect to a nonimmigrant described in paragraph (1) or (2) who does not perform unauthorized employment, any limit on the period of authorized stay shall be extended by the period of the strike or lockout, except that any such extension may not continue beyond the maximum authorized period of stay.

''(4) The provisions of this subsection shall take effect on the date of the enactment of this Act.''

OFF-CAMPUS WORK AUTHORIZATION FOR STUDENTS (F NONIMMIGRANTS)

Section 221 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 303(b)(1), (2), Dec. 12, 1991, 105 Stat. 1748; Pub. L. 103–416, title II, § 215(a), Oct. 25, 1994, 108 Stat. 4315, provided that:

''(a) 5-YEAR PROVISION.—With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)] during the 5-year period beginning October 1, 1991, the Attorney General shall grant such an alien work authorization to be employed off-campus if—

''(1) the alien has completed 1 academic year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

''(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment, and

''(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection.

''(b) REPORT TO CONGRESS.—Not later than April 1, 1996, the Commissioner of Immigration and Naturalization and the Secretary of Labor shall prepare and submit to the Congress a report on—

''(1) whether the program of work authorization under subsection (a) should be extended, and

''(2) the impact of such program on prevailing wages of workers.''

LIMITATION ON ADMISSION OF ALIENS SEEKING EMPLOYMENT IN THE VIRGIN ISLANDS

Notwithstanding any other provision of law, the Attorney General not to be authorized, on or after Sept. 30, 1982, to approve any petition filed under subsec. (c) of this section in the case of importing any alien as a nonimmigrant under section 1101(a)(15)(H)(ii) of this title for employment in the Virgin Islands of the United States other than as an entertainer or as an athlete and for a period not exceeding 45 days, see section 3 of Pub. L. 97–271, set out as a note under section 1255 of this title.

IMPORTATION OF SHEEPHERDERS; TERMINATION OF QUOTA DEDUCTIONS

Quota deductions authorized by acts June 30, 1950, ch. 423, 64 Stat. 306; Apr. 9, 1952, ch. 171, 66 Stat. 50, terminated effective July 1, 1957.

CANCELLATION OF CERTAIN NONIMMIGRANT DEPARTURE BONDS

Pub. L. 85–531, July 18, 1958, 72 Stat. 375, authorized the Attorney General, upon application made not later than July 18, 1963, to cancel any departure bond posted pursuant to the Immigration Act of 1924, as amended, or the Immigration and Nationality Act [this chapter], on behalf of any refugee who entered the United States as a nonimmigrant after May 6, 1945, and prior to July 1, 1953, and who had his immigration status adjusted to that of an alien admitted for permanent residence pursuant to any public or private law.

§ 1184a. Philippine Traders as nonimmigrants

Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (66 Stat. 163), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of said Act if entering solely for the purposes specified in subsection (i) or (ii) of said section.

(June 18, 1954, ch. 323, 68 Stat. 264.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

§ 1185. Travel control of citizens and aliens

(a) Restrictions and prohibitions

Unless otherwise ordered by the President, it shall be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

(b) Citizens

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

(c) Definitions

The term ''United States'' as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term ''person'' as used in this section shall be deemed

to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(d) Nonadmission of certain aliens

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

(e) Revocation of proclamation as affecting penalties

The revocation of any rule, regulation, or order issued in pursuance of this section shall not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such rule, regulation, or order.

(f) Permits to enter

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section.

(June 27, 1952, ch. 477, title II, ch. 2, § 215, 66 Stat. 190; Pub. L. 95–426, title VII, § 707(a)–(d), Oct. 7, 1978, 92 Stat. 992, 993; Pub. L. 103–416, title II, § 204(a), Oct. 25, 1994, 108 Stat 4311.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416 inserted ''United States'' after ''valid''.

1978—Subsec. (a). Pub. L. 95–426, § 707(a), substituted provision that the enumerated acts would, unless otherwise ordered by the President, be deemed unlawful for provisions declaring it unlawful when the United States is at war or during a proclaimed national emergency, or, as to aliens, when there exists a state of war between two or more states and the President finds that the interests of the United States require restrictions to be imposed upon departure of persons from and their entry into the United States.

Subsec. (b). Pub. L. 95–426, § 707(b), substituted provisions prohibiting departure or entry except as otherwise provided by the President and subject to such limitations and exceptions as he may authorize or prescribe, for provisions prohibiting such departure or entry after proclamation of a national emergency has been made, published and in force.

Subsec. (c). Pub. L. 95–426, § 707(d), redesignated subsec. (d) as (c). Former subsec. (c), which provided for penalties for violation of this section, was struck out.

Subsec. (d). Pub. L. 95–426, § 707(d), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95–426, § 707(c), (d), redesignated subsec. (f) as (e) and struck out ''proclamation,'' before ''rule'' in two places. Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 95–426, § 707(d), redesignated subsec. (g) as (f). Former (f) redesignated (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 204(b) of Pub. L. 103–416 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to departures and entries (and attempts thereof) occurring on or after the date of enactment of this Act [Oct. 25, 1994].''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

DELEGATION OF AUTHORITY UNDER SECTIONS 1182(f) AND 1185(a)(1) OF THIS TITLE

Authority of President under subsec. (a)(1) of this section to maintain custody and conduct screening of any undocumented person seeking to enter the United States who is encountered in a vessel interdicted on the high seas through Dec. 31, 2000, delegated to Attorney General by Memorandum of President of the United States, Sept. 24, 1999, 64 F.R. 55809, set out as a note under section 1182 of this title.

WESTERN HEMISPHERE TRAVEL INITIATIVE

Pub. L. 110–53, title VII, § 724, Aug. 3, 2007, 121 Stat. 350, provided that: ''Before the Secretary of Homeland Security publishes a final rule in the Federal Register implementing section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note) [set out below]—

''(1) the Secretary of Homeland Security shall complete a cost-benefit analysis of the Western Hemisphere Travel Initiative, authorized under such section 7209; and

''(2) the Secretary of State shall develop proposals for reducing the execution fee charged for the passport card, proposed at 71 Fed. Reg. 60928–32 (October 17, 2006), including the use of mobile application teams, during implementation of the land and sea phase of the Western Hemisphere Travel Initiative, in order to encourage United States citizens to apply for the passport card.''

Pub. L. 108–458, title VII, § 7209, Dec. 17, 2004, 118 Stat. 3823, as amended by Pub. L. 109–295, title V, § 546, Oct. 4, 2006, 120 Stat. 1386; Pub. L. 110–53, title VII, § 723, Aug. 3, 2007, 121 Stat. 349; Pub. L. 110–161, div. E, title V, § 545, Dec. 26, 2007, 121 Stat. 2080, provided that:

''(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

''(1) Existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification.

''(2) The planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities.

''(3) Additional safeguards are needed to ensure that terrorists cannot enter the United States.

''(b) PASSPORTS.—

''(1) DEVELOPMENT OF PLAN AND IMPLEMENTATION.—

''(A) The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). Such plan may not be implemented earlier than the date that is the later of 3 months after the Secretary of State and the Secretary of Homeland Security make the certification required in subparagraph (B) or June 1, 2009. The plan shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k) [8 U.S.C. 1365b(k)]).

''(B) The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the

House of Representatives that the following criteria have been met prior to implementation of section 7209(b)(1)(A)—

''(i) the National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: *Provided*, That the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: *Provided further*, That to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

''(ii) the technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

''(iii) an agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

''(iv) an alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

''(v) the necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

''(vi) the passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda;

''(vii) a single implementation date for sea and land borders has been established; and

''(viii) the signing of a memorandum of agreement to initiate a pilot program with not less than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, not valid for certification of citizenship for any purpose other than admission into the United States from Canada or Mexico, and issued by such State to an individual, may permit the individual to use the driver's license to meet the documentation requirements under subparagraph (A) for entry into the United States from Canada or Mexico at land and sea ports of entry.

''(C) REPORT.—Not later than 180 days after the initiation of the pilot program described in subparagraph (B)(viii), the Secretary of Homeland Security and the Secretary of State shall submit to the appropriate congressional committees a report which includes—

''(i) an analysis of the impact of the pilot program on national security;

''(ii) recommendations on how to expand the pilot program to other States;

''(iii) any appropriate statutory changes to facilitate the expansion of the pilot program to additional States and to citizens of Canada;

''(iv) a plan to screen individuals participating in the pilot program against United States terrorist watch lists; and

''(v) a recommendation for the type of machine-readable technology that should be used in enhanced driver's licenses, based on individual privacy considerations and the costs and feasibility of incorporating any new technology into existing driver's licenses.

''(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)], to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

''(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

''(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act [8 U.S.C. 1182(d)(4)(B)] to waive documentary requirements for travel into the United States; and

''(2) the President may not exercise discretion under section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except—

''(A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship;

''(B) in the case of an unforeseen emergency in individual cases; or

''(C) in the case of humanitarian or national interest reasons in individual cases.

''(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act [8 U.S.C. 1182(d)(4)(C)] until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.''

[Amendment by Pub. L. 110–161, § 545, to section 7209 of Pub. L. 108–458, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

EX. ORD. NO. 12172. DELEGATION OF AUTHORITY OF PRESIDENT TO SECRETARY OF STATE AND ATTORNEY GENERAL RESPECTING ENTRY OF IRANIAN ALIENS INTO THE UNITED STATES

Ex. Ord. No. 12172, Nov. 26, 1979, 44 F.R. 67947, as amended by Ex. Ord. No. 12206, Apr. 7, 1980, 45 F.R. 24101, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1–101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

Section 1–102. Effective Date. This order is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 13323. ASSIGNMENT OF FUNCTIONS RELATING TO ARRIVALS IN AND DEPARTURES FROM THE UNITED STATES

Ex. Ord. No. 13323, Dec. 30, 2003, 69 F.R. 241, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and section 301 of title 3, United States Code, and to

strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

SECTION 1. *Functions of the Secretary of Homeland Security*. The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

SEC. 2. *Functions of the Secretary of State*. The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

SEC. 3. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 1186. Transferred

CODIFICATION

Section, act June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 301(c), 100 Stat. 3411, which related to admission of temporary H–2A workers, was renumbered § 218 by Pub. L. 100–525, § 2(*l*)(2), Oct. 24, 1988, 102 Stat. 2612, and transferred to section 1188 of this title.

§ 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (g)(1) of this section) and an alien son or daughter (as defined in subsection (g)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsections[1] (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(b) Termination of status if finding that qualifying marriage improper

(1) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

(i) was entered into for the purpose of procuring an alien's admission as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear

[1] So in original. Probably should be "subsection".

for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying marriage.

(4) Hardship waiver

The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in prep-

aration of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)[2] of section 1184 of this title with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a) of this section, and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions

In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term "alien son or daughter" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term "qualifying marriage" means the marriage described to in paragraph (1).

(4) The term "petitioning spouse" means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Pub. L. 99–639, § 2(a), Nov. 10, 1986, 100 Stat. 3537; amended Pub. L. 100–525, § 7(a), Oct. 24, 1988, 102 Stat. 2616; Pub. L. 101–649, title VII, § 701(a), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102–232, title III, § 302(e)(8)(B), Dec. 12, 1991, 105 Stat. 1746; Pub. L. 103–322, title IV, § 40702(a), Sept. 13, 1994, 108 Stat. 1955; Pub. L. 104–208, div. C, title III, § 308(d)(4)(E), (e)(7), (f)(1)(I), (J), Sept. 30, 1996, 110 Stat. 3009–618, 3009–620, 3009–621; Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–145.)

REFERENCES IN TEXT

Subsection (p) of section 1184 of this title, referred to in subsec. (d)(1)(A)(ii), was redesignated subsec. (r) of section 1184 by Pub. L. 108–193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS

2000—Subsecs. (b)(1)(B), (d)(1)(A)(ii). Pub. L. 106–553 substituted "section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title" for "section 1154(a) or 1184(d) of this title".

1996—Subsec. (b)(1)(A)(i). Pub. L. 104–208, § 308(f)(1)(I), substituted "admission" for "entry".

Subsec. (b)(2). Pub. L. 104–208, § 308(e)(7), substituted "removal" for "deportation" in heading and "remove" for "deport" in text.

[2] See References in Text note below.

Subsec. (c)(2)(B). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and text.

Subsec. (c)(3)(D). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(4)(A). Pub. L. 104–208, § 308(e)(7), substituted ''removed'' for ''deported''.

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

Subsec. (d)(2)(C). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' wherever appearing in heading and text.

Subsec. (f). Pub. L. 104–208, § 308(d)(4)(E), substituted ''inadmissibility'' for ''exclusion''.

1994—Subsec. (c)(4). Pub. L. 103–322 inserted after second sentence ''In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.''

1991—Subsec. (g)(1). Pub. L. 102–232 substituted ''section 1153(d)'' for ''section 1153(a)(8)'' in closing provisions.

1990—Subsec. (c)(4). Pub. L. 101–649 struck out ''or'' at end of subpar. (A), struck out ''by the alien spouse for good cause'' after ''death of the spouse)'' and substituted '', or'' for period at end of subpar. (B), added subpar. (C), and inserted at end ''The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.''

1988—Pub. L. 100–525, § 7(a)(1), made technical amendment to directory language of Pub. L. 99–639, § 2(a), which enacted this section.

Subsec. (c)(3)(A). Pub. L. 100–525, § 7(a)(2), substituted ''90 days'' for ''90-days''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, § 1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Section 40702(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994] and shall apply to applications made before, on, or after such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsection (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

(b) Termination of status if finding that qualifying entrepreneurship improper

(1) In general

In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or

(ii) the alien was not sustaining the actions described in clause (i) throughout the

period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 1153(b)(5) of this title,

then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien entrepreneur, alien spouse, or alien child to be removed—

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section),

the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 1186a of this title) as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the such filing[1] or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

(D) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying commercial enterprise.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that the alien—

(A)(i) invested, or is actively in the process of investing, the requisite capital; and

(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; and

(B) is otherwise conforming to the requirements of section 1153(b)(5) of this title.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of

[1] So in original.

this section must be filed during the 90-day period before the second anniversary of the alien's lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Definitions

In this section:

(1) The term ''alien entrepreneur'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 1153(b)(5) of this title.

(2) The term ''alien spouse'' and the term ''alien child'' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(3) The term ''commercial enterprise'' includes a limited partnership.

(June 27, 1952, ch. 477, title II, ch. 2, § 216A, as added Pub. L. 101–649, title I, § 121(b)(1), Nov. 29, 1990, 104 Stat. 4990; amended Pub. L. 102–232, title III, § 302(b)(3), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 104–208, div. C, title III, § 308(e)(8), Sept. 30, 1996, 110 Stat. 3009–620; Pub. L. 107–273, div. C, title I, § 11036(b), Nov. 2, 2002, 116 Stat. 1847.)

AMENDMENTS

2002—Subsec. (b)(1)(A). Pub. L. 107–273, § 11036(b)(1)(A), substituted ''investment in'' for ''establishment of''.

Subsec. (b)(1)(B). Pub. L. 107–273, § 11036(b)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) a commercial enterprise was not established by the alien,

''(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

''(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien's residence in the United States, or''.

Subsec. (d)(1). Pub. L. 107–273, § 11036(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that—

''(A) a commercial enterprise was established by the alien;

''(B) the alien invested or was actively in the process of investing the requisite capital; and

''(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien's residence in the United States.''

Subsec. (f)(3). Pub. L. 107–273, § 11036(b)(3), added par. (3).

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(2)(B). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and text.

Subsec. (c)(3)(D). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (d)(2)(C). Pub. L. 104–208 substituted ''removal'' for ''deportation'' wherever appearing in heading and text.

1991—Subsec. (c)(2)(A). Pub. L. 102–232, § 302(b)(3)(A), in closing provisions inserted parenthetical provision relating to alien's spouse and children.

Subsecs. (c)(3)(B), (d)(2)(A). Pub. L. 102–232, § 302(b)(3)(B), struck out ''obtaining the status of'' before ''lawful admission''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002 and applicable to aliens having certain petitions pending under this section or section 1154 of this title on or after Nov. 2, 2002, see section 11036(c) of Pub. L. 107–273, set out as a note under section 1153 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE

Section effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

IMMIGRATION BENEFITS

Pub. L. 107–273, div. C, title I, §§ 11031–11034, Nov. 2, 2002, 116 Stat. 1837–1846, provided that:

''SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).

''(b) ELIGIBLE ALIENS DESCRIBED.—

''(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—

''(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and

''(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act [Nov. 2, 2002], a petition requesting the removal of such conditional basis.

''(2) REOPENING PETITIONS PREVIOUSLY DENIED.—

''(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).

''(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—

''(i) the alien is inadmissible or deportable on any ground; or

''(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.

''(C) DEPORTATION OR REMOVAL PROCEEDINGS.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

''(c) DETERMINATIONS ON PETITIONS.—

''(1) INITIAL DETERMINATION.—

''(A) IN GENERAL.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002], whether—

''(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);

''(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and

''(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(B) INVESTMENT UNDER PILOT IMMIGRATION PROGRAM.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act [Nov. 2, 2002], shall be deemed to satisfy the requirements of such subparagraph.

''(C) EXCEPTION FOR TROUBLED BUSINESSES.—In the case of an eligible alien who has made a capital investment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.

''(D) DATES.—The dates described in this subparagraph are the following:

''(i) The date on which the petition described in subsection (b)(1)(C) is filed.

''(ii) 6 months after the date described in clause (i).

''(iii) The date on which the determination under subparagraph (A) or (C) is made.

''(E) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(F) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act

(8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(ii) CONTINUATION OF CONDITIONAL BASIS IF CERTAIN ADVERSE DETERMINATIONS.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.

''(iii) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(i), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(iv) ADMINISTRATIVE AND JUDICIAL REVIEW.—An alien may seek administrative review of an adverse determination made under subparagraph (A) by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 242(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(2) SECOND DETERMINATION.—

''(A) AUTHORIZATION TO CONSIDER INVESTMENTS IN OTHER COMMERCIAL ENTERPRISES.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (1)(F)(ii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).

''(B) PETITION.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).

''(C) PERIOD FOR FILING PETITION.—

''(i) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).

''(D) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION.—

''(i) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).

''(E) DETERMINATIONS AFTER PETITION.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—

''(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;

''(ii) all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);

''(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii); and

''(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause; and

''(iii) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and

''(II) if the Attorney General determined under paragraph (1)(A)(iii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.

''(F) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(G) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) TERMINATION IF ADVERSE DETERMINATION.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(d) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (c) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General.

''(e) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act [Nov. 2, 2002] by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.

''(f) DEFINITION OF FULL-TIME.—For purposes of this section, the term 'full-time' means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

''SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002].

''(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if the alien—

''(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(2) pursuant to such approval, timely filed before the date of the enactment of this Act [Nov. 2, 2002] an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

''(3) is not inadmissible or deportable on any ground.

''(c) TREATMENT OF CERTAIN APPLICATIONS.—

''(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

''(2) APPLICATIONS NO LONGER PENDING.—

''(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act [Nov. 2, 2002], the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as reopened, if such lack of pendency is due to a determination that the alien—

''(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or

''(ii) departed the United States without advance parole.

''(B) APPLICANTS ABROAD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.

''(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of an application under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.

''(e) REMOVAL OF CONDITIONAL BASIS.—

''(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien's spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in

the United States in which the alien has made a capital investment at any time.

''(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—

''(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;

''(B) subject to subparagraphs (B) and (C) of section 11031(c)(1), all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on either of the dates described in paragraph (3); and

''(C) considering the alien's investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(3) DATES.—The dates described in this paragraph are the following:

''(A) The date on which the application described in subsection (b)(2) was filed.

''(B) The date on which the determination under paragraph (2) is made.

''(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.

''SEC. 11033. REGULATIONS.

''The Immigration and Naturalization Service shall promulgate regulations to implement this chapter [chapter 1 (§§ 11031–11034) of subtitle B of title I of div. C of Pub. L. 107–273, enacting this note] not later than 120 days after the date of enactment of this Act [Nov. 2, 2002]. Until such regulations are promulgated, the Attorney General shall not deny a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.

''SEC. 11034. DEFINITIONS.

''Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).''

§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the ''program'') under which the requirement of paragraph (7)(B)(i)(II) of section 1182(a) of this title may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the program as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of program country

The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c) of this section.

(3) Machine readable passport

(A) In general

Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) Limited waiver authority

For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c) of this section), if the Secretary of State finds that the program country—

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) Executes immigration forms

The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(5) Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations[1] which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section. The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the

[1] So in original. Probably should be followed by a comma.

Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) No previous violation

If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) Automated system check

The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(10) Electronic transmission of identification information

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(11) Eligibility determination under the electronic travel authorization system

Beginning on the date on which the electronic travel authorization system developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

(b) Waiver of rights

An alien may not be provided a waiver under the program unless the alien has waived any right—

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

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

(c) Designation of program countries

(1) In general

The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) Qualifications

Except as provided in subsection (f) of this section, a country may not be designated as a program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate

Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) Machine readable passport program

(i) In general

Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) Deadline for compliance for certain countries

In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) Law enforcement and security interests

The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(D) Reporting lost and stolen passports

The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.

(E) Repatriation of aliens

The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(F) Passenger information exchange

The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

(3) Continuing and subsequent qualifications

For each fiscal year after the initial period—

(A) Continuing qualification

In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) New countries

In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period

For purposes of paragraphs (2) and (3), the term ''initial period'' means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) Written reports on continuing qualification; designation terminations

(A) Periodic evaluations

(i) In general

The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d) of this section;

(III) shall submit a written report to the Committee on the Judiciary, the

Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I); and

(IV) shall submit to Congress a report regarding the implementation of the electronic travel authorization system under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8).

(ii) Effective date

A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

(iii) Redesignation

In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) Emergency termination

(i) In general

In the case of a program country in which an emergency occurs that the Secretary of Homeland Security, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

(ii) Definition

For purposes of clause (i), the term ''emergency'' means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country's territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

(iii) Redesignation

The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(iv) Program suspension authority

The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

(III) shall restore the suspended country's participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

(C) Treatment of nationals after termination

For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) of this section until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) of this section shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) Computation of visa refusal rates

For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) Visa waiver information

(A) In general

In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) Reporting requirement

On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this chapter under which the visas were refused; and

(v) the number of such nationals that were refused under section 1184(b) of this title as a percentage of the visas that were issued to such nationals.

(C) Certification

Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) Consideration of countries in the visa waiver program

Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) Definition

In this paragraph, the term ''appropriate congressional committees'' means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(8) Nonimmigrant visa refusal rate flexibility

(A) Certification

(i) In general

On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic travel authorization system required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic travel authorization system are in place.

(ii) Notification to Congress

The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

(iii) Temporary suspension of waiver authority

Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary's waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

(iv) Rule of construction

Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

(B) Waiver

After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

(i) the country meets all security requirements of this section;

(ii) the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

(v)(I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

(C) Maximum visa overstay rate

(i) Requirement to establish

After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

(ii) Visa overstay rate defined

In this paragraph the term ''visa overstay rate'' means, with respect to a country, the ratio of—

(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

(iii) Report and publication

The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

(9) Discretionary security-related considerations

In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

(A) airport security standards in the country;

(B) whether the country assists in the operation of an effective air marshal program;

(C) the standards of passports and travel documents issued by the country; and

(D) other security-related factors, including the country's cooperation with the United States' initiatives toward combating terrorism and the country's cooperation with the United States intelligence community in sharing information regarding terrorist threats.

(10) Technical assistance

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

(11) Independent review

(A) In general

Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection (c)(5)(A), the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

(B) Reporting requirement

The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

(C) Contents

The independent intelligence assessment conducted by the Director shall include—

(i) a review of all current, credible terrorist threats of the subject country;

(ii) an evaluation of the subject country's counterterrorism efforts;

(iii) an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions;

(iv) an assessment of the risks associated with including the subject country in the program; and

(v) recommendations to mitigate the risks identified in clause (iv).

(d) Authority

Notwithstanding any other provision of this section, the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section. The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

(e) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section,

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B) of this section.

(2) Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) Business aircraft requirements

(A) In general

For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations[2] that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) Collections

In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 1356(h) of this title.

(f) Duration and termination of designation

(1) In general

(A) Determination and notification of disqualification rate

Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) Probationary status

If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) Termination of designation

Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) Termination of probationary status

(A) In general

If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section[3] (c)(2)(C) of this section, or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) Effective date

A termination of the designation of a country under subparagraph (A) shall take

[2] So in original. Probably should be followed by a comma.

[3] So in original. Probably should be ''subsection''.

effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a) of this section.

(3) Nonapplicability of certain provisions

Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) "Disqualification rate" defined

For purposes of this subsection, the term ''disqualification rate'' means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) Failure to report passport thefts

If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D) of this section, the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(g) Visa application sole method to dispute denial of waiver based on a ground of inadmissibility

In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 1182(a) of this title that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9) of this section, the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) Use of information technology systems

(1) Automated entry-exit control system

(A) System

Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Data collection by carriers

Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4) of this section.

(ii) Data provision by carriers

Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) Calculation

The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) Reporting

(i) Percentage of nationals lacking departure record

As part of the annual report required to be submitted under section 1365a(e)(1) of this title, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) System effectiveness

Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 1365a(e)(1) of this title.

(2) Automated data sharing system

(A) System

The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from

their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Supplying information to immigration officers conducting inspections at ports of entry

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 1225 of this title to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) Supplying photographs of inadmissible aliens

The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) Maintaining records on applications for admission

The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) Electronic travel authorization system

(A) System

The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic travel authorization system (referred to in this paragraph as the ''System'') to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the[4] alien to travel to the United States.

(B) Fees

The Secretary of Homeland Security may charge a fee for the use of the System, which shall be—

(i) set at a level that will ensure recovery of the full costs of providing and administering the System; and

(ii) available to pay the costs incurred to administer the System.

(C) Validity

(i) Period

The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

(ii) Limitation

A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

(iii) Not a determination of visa eligibility

A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

(iv) Judicial review

Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

(D) Report

Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

(i) the Committee on Homeland Security of the House of Representatives;

(ii) the Committee on the Judiciary of the House of Representatives;

(iii) the Committee on Foreign Affairs of the House of Representatives;

(iv) the Permanent Select Committee on Intelligence of the House of Representatives;

(v) the Committee on Appropriations of the House of Representatives;

(vi) the Committee on Homeland Security and Governmental Affairs of the Senate;

(vii) the Committee on the Judiciary of the Senate;

(viii) the Committee on Foreign Relations of the Senate;

(ix) the Select Committee on Intelligence of the Senate; and

(x) the Committee on Appropriations of the Senate.

(i) Exit system

(1) In general

Not later than one year after August 3, 2007, the Secretary of Homeland Security shall es-

[4] So in original. Probably should be ''an''.

tablish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

(2) System requirements

The system established under paragraph (1) shall—

(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

(3) Report

Not later than 180 days after August 3, 2007, the Secretary shall submit to Congress a report that describes—

(A) the progress made in developing and deploying the exit system established under this subsection; and

(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.

(June 27, 1952, ch. 477, title II, ch. 2, § 217, as added Pub. L. 99–603, title III, § 313(a), Nov. 6, 1986, 100 Stat. 3435; amended Pub. L. 100–525, § 2(p)(1), (2), Oct. 24, 1988, 102 Stat. 2613; Pub. L. 101–649, title II, § 201(a), Nov. 29, 1990, 104 Stat. 5012; Pub. L. 102–232, title III, §§ 303(a)(1), (2), 307(*l*)(3), Dec. 12, 1991, 105 Stat. 1746, 1756; Pub. L. 103–415, § 1(m), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103–416, title II, §§ 210, 211, Oct. 25, 1994, 108 Stat. 4312, 4313; Pub. L. 104–208, div. C, title III, § 308(d)(4)(F), (e)(9), title VI, § 635(a)–(c)(1), (3), Sept. 30, 1996, 110 Stat. 3009–618, 3009–620, 3009–702, 3009–703; Pub. L. 105–119, title I, § 125, Nov. 26, 1997, 111 Stat. 2471; Pub. L. 105–173, §§ 1, 3, Apr. 27, 1998, 112 Stat. 56; Pub. L. 106–396, title I, § 101(a), title II, §§ 201–207, title IV, § 403(a)–(d), Oct. 30, 2000, 114 Stat. 1637–1644, 1647, 1648; Pub. L. 107–56, title IV, § 417(c), (d), Oct. 26, 2001, 115 Stat. 355; Pub. L. 107–173, title III, § 307(a), May 14, 2002, 116 Stat. 556; Pub. L. 110–53, title VII, § 711(c), (d)(1), Aug. 3, 2007, 121 Stat. 339, 341.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–53, § 711(d)(1)(A)(i), designated concluding provisions as par. (10) and inserted heading.

Subsec. (a)(11). Pub. L. 110–53, § 711(d)(1)(A)(ii), added par. (11).

Subsec. (c)(2)(D). Pub. L. 110–53, § 711(d)(1)(B)(i)(I), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''The government of the country certifies that it reports to the United States Government on a timely basis the theft of blank passports issued by that country.''

Subsec. (c)(2)(E), (F). Pub. L. 110–53, § 711(d)(1)(B)(i)(II), added subpars. (E) and (F).

Subsec. (c)(5)(A)(i). Pub. L. 110–53, § 711(d)(1)(B)(ii)(I), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in introductory provisions.

Subsec. (c)(5)(A)(i)(III). Pub. L. 110–53, § 711(d)(1)(B)(ii)(II)(bb)(AA), substituted '', the Committee on Foreign Affairs, and the Committee on Homeland Security,'' for ''and the Committee on International Relations'' and '', the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs'' for ''and the Committee on Foreign Relations''.

Subsec. (c)(5)(A)(i)(IV). Pub. L. 110–53, § 711(d)(1)(B)(ii)(II)(aa), (bb)(BB), (cc), added subcl. (IV).

Subsec. (c)(5)(A)(ii), (iii), (B)(i), (iii). Pub. L. 110–53, § 711(d)(1)(B)(ii)(I), substituted ''Secretary of Homeland Security'' for ''Attorney General'' wherever appearing.

Subsec. (c)(5)(B)(iv). Pub. L. 110–53, § 711(d)(1)(B)(ii)(III), added cl. (iv).

Subsec. (c)(8), (9). Pub. L. 110–53, § 711(c), added pars. (8) and (9).

Subsec. (c)(10), (11). Pub. L. 110–53, § 711(d)(1)(B)(iii), added pars. (10) and (11).

Subsec. (d). Pub. L. 110–53, § 711(d)(1)(C), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in first sentence and inserted at end ''The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.''

Subsec. (f)(5). Pub. L. 110–53, § 711(d)(1)(D), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in two places and ''theft or loss of passports'' for ''theft of blank passports''.

Subsec. (h)(3). Pub. L. 110–53, § 711(d)(1)(E), added par. (3).

Subsec. (i). Pub. L. 110–53, § 711(d)(1)(F), added subsec. (i).

2002—Subsec. (c)(2)(D). Pub. L. 107–173, § 307(a)(1), added subpar. (D).

Subsec. (c)(5)(A)(i). Pub. L. 107–173, § 307(a)(2), substituted ''2 years'' for ''5 years'' in introductory provisions.

Subsec. (f)(5). Pub. L. 107–173, § 307(a)(3), added par. (5).

2001—Subsec. (a)(3). Pub. L. 107–56, § 417(d), which directed the substitution of ''(A) IN GENERAL.—Except as provided in subparagraph (B), on or after'' for ''On or after'' and the addition of subpar. (B), was executed making the substitution for ''On and after'' and adding subpar. (B) to reflect the probable intent of Congress.

Pub. L. 107–56, § 417(c), substituted ''2003,'' for ''2007,''.

2000—Pub. L. 106–396, § 101(a)(1), in section catchline struck out ''pilot'' before ''program''.

Subsec. (a). Pub. L. 106–396, §§ 101(a)(2)(A), (B), 403(c), struck out ''pilot'' before ''program'' in heading and two places in introductory provisions and inserted concluding provisions.

Subsec. (a)(1). Pub. L. 106–396, § 101(a)(2)(C), substituted ''program'' for ''pilot program period (as defined in subsection (e) of this section)''.

Subsec. (a)(2). Pub. L. 106–396, § 101(a)(2)(D), in heading struck out ''pilot'' before ''program''.

Subsec. (a)(2)(A). Pub. L. 106–396, § 201, inserted '', either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions,'' after ''to extend)''.

Subsec. (a)(3), (4). Pub. L. 106–396, § 202(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–396, § 403(a), substituted '', including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section. The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and

proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement'' for ''which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer''.

Pub. L. 106–396, § 202(a)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6), (7). Pub. L. 106–396, § 202(a)(1), designated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 106–396, § 403(b), inserted ''or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations'' after ''regulations''.

Pub. L. 106–396, § 202(a)(1), designated par. (7) as (8).

Subsec. (a)(9). Pub. L. 106–396, § 203(a), added par. (9).

Subsec. (b). Pub. L. 106–396, § 101(a)(3), struck out ''pilot'' before ''program'' in introductory provisions.

Subsec. (c). Pub. L. 106–396, § 101(a)(4)(A), in heading struck out ''pilot'' before ''program''.

Subsec. (c)(1). Pub. L. 106–396, § 101(a)(4)(B), struck out ''pilot'' before ''program''.

Subsec. (c)(2). Pub. L. 106–396, § 101(a)(4)(C), in introductory provisions, substituted ''subsection (f)'' for ''subsection (g)'' and struck out ''pilot'' before ''program''.

Subsec. (c)(2)(B). Pub. L. 106–396, § 202(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.''

Subsec. (c)(2)(C). Pub. L. 106–396, § 204(a), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.''

Subsec. (c)(3). Pub. L. 106–396, § 101(a)(4)(D)(i), struck out ''(within the pilot program period)'' after ''fiscal year'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 106–396, § 101(a)(4)(D)(ii), struck out ''pilot'' before ''program'' in two places in introductory provisions.

Subsec. (c)(3)(B). Pub. L. 106–396, § 101(a)(4)(D)(iii), struck out ''pilot'' before ''program'' in introductory provisions.

Subsec. (c)(5). Pub. L. 106–396, § 204(b), added par. (5).

Subsec. (c)(6). Pub. L. 106–396, § 206, added par. (6).

Subsec. (c)(7). Pub. L. 106–396, § 207, added par. (7).

Subsec. (e)(1). Pub. L. 106–396, §§ 101(a)(5)(A), 403(d)(1)(A), in introductory provisions, substituted ''carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier'' in two places and struck out ''pilot'' before ''program''.

Subsec. (e)(1)(B). Pub. L. 106–396, § 101(a)(5)(B), struck out ''pilot'' before ''program''.

Subsec. (e)(1)(D). Pub. L. 106–396, § 205(b), added subpar. (D).

Subsec. (e)(2). Pub. L. 106–396, § 403(d)(1), substituted ''carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier'' and ''failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title'' for ''carrier's failure''.

Subsec. (e)(3). Pub. L. 106–396, § 403(d)(2), added par. (3).

Subsec. (f). Pub. L. 106–396, § 101(a)(6), redesignated subsec. (g) as (f) and struck out heading and text of former subsec. (f). Text read as follows: ''For purposes of this section, the term 'pilot program period' means the period beginning on October 1, 1988, and ending on April 30, 2000.''

Subsec. (f)(1)(A), (C). Pub. L. 106–396, § 101(a)(7)(A), (B), struck out ''pilot'' before ''program''.

Subsec. (f)(2) to (4). Pub. L. 106–396, § 101(a)(7)(C)–(E), substituted ''as a program country'' for ''as a pilot program country'' in two places in par. (2)(A) and struck out ''pilot'' before ''program'' in pars. (3) and (4)(A).

Subsec. (g). Pub. L. 106–396, § 203(b), added subsec. (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 106–396, § 205(a), added subsec. (h).

1998—Subsec. (c)(2). Pub. L. 105–173, § 3, reenacted heading without change and amended text generally. Prior to amendment, text consisted of introductory provisions and subpars. (A) to (D) relating to low nonimmigrant visa refusal rate for previous 2-year period, low nonimmigrant visa refusal rate for each of 2 previous years, machine readable passport program, and law enforcement interests.

Subsec. (f). Pub. L. 105–173, § 1, substituted ''2000'' for ''1998''.

1997—Subsec. (f). Pub. L. 105–119 reenacted subsec. heading without change and amended text generally, substituting ''April 30, 1998'' for ''September 30, 1997''.

1996—Subsec. (a). Pub. L. 104–208, § 635(a)(1), in introductory provisions, substituted ''Attorney General, in consultation with the Secretary of State'' for ''Attorney General and the Secretary of State, acting jointly''.

Subsec. (a)(2)(B). Pub. L. 104–208, § 635(c)(3), struck out ''or is designated as a pilot program country with probationary status under subsection (g) of this section'' after ''subsection (c) of this section''.

Subsec. (b)(2). Pub. L. 104–208, § 308(e)(9), substituted ''removal of'' for ''deportation against''.

Subsec. (c)(1). Pub. L. 104–208, § 635(a)(2), substituted ''Attorney General, in consultation with the Secretary of State,'' for ''Attorney General and the Secretary of State acting jointly''.

Subsec. (c)(3)(A)(i). Pub. L. 104–208, § 308(d)(4)(F), substituted ''denied admission at the time of arrival'' for ''excluded from admission''.

Subsec. (d). Pub. L. 104–208, § 635(a)(3), substituted ''Attorney General, in consultation with the Secretary of State'' for ''Attorney General and the Secretary of State, acting jointly''.

Subsec. (f). Pub. L. 104–208, § 635(b), substituted ''1997.'' for ''1996''.

Subsec. (g). Pub. L. 104–208, § 635(c)(1), amended heading and text of subsec. (g) generally. Prior to amendment, text provided authority for Attorney General and Secretary of State to designate countries as pilot program countries with probationary status.

Subsec. (g)(4)(A)(i). Pub. L. 104–208, § 308(d)(4)(F), substituted ''denied admission at the time of arrival'' for ''excluded from admission''.

1994—Subsec. (a)(2)(B). Pub. L. 103–416, § 211(1), inserted before period at end ''or is designated as a pilot program country with probationary status under subsection (g) of this section''.

Subsec. (c)(2). Pub. L. 103–416, § 211(3), substituted ''Except as provided in subsection (g)(4) of this section, a country'' for ''A country''.

Subsec. (f). Pub. L. 103–416, § 210, substituted ''1996'' for ''1995.''.

Pub. L. 103–415 substituted ''1995'' for ''1994''.

Subsec. (g). Pub. L. 103–416, § 211(2), added subsec. (g).

1991—Subsec. (a). Pub. L. 102–232, § 307(*l*)(3), substituted ''paragraph (7)(B)(i)(II)'' for ''paragraph (26)(B)''.

Subsec. (a)(4). Pub. L. 102–232, § 303(a)(1)(A), in heading substituted ''into the United States'' for ''by sea or air''.

Subsec. (b). Pub. L. 102–232, § 303(a)(1)(B), made technical amendment to heading.

Subsec. (e)(1). Pub. L. 102–232, § 303(a)(2), substituted ''subsection (a)(4)'' for ''subsection (a)(4)(C)''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 201(a)(1), inserted '', and presents a passport issued by,'' after ''is a national of''.

Subsec. (a)(3). Pub. L. 101–649, § 201(a)(2), in heading substituted reference to immigration forms for reference to entry control and waiver forms, and in text substituted ''completes such immigration form as the Attorney General shall establish'' for ''—

''(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3) of this section, and

''(B) executes a waiver of review and appeal described in subsection (b)(4) of this section''.

Subsec. (a)(4). Pub. L. 101–649, § 201(a)(3), added par. (4) and struck out former par. (4) which waived visa requirement for certain aliens having round-trip transportation tickets.

Subsec. (a)(7). Pub. L. 101–649, § 201(a)(4), added par. (7).

Subsec. (b). Pub. L. 101–649, § 201(a)(5), redesignated subsec. (b)(4) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out subsec. (b) heading ''Conditions before pilot program can be put into operation'' and pars. (1) to (3) which related to prior notice to Congress, automated data arrival and departure system, and visa waiver information form, respectively.

Subsec. (c)(1). Pub. L. 101–649, § 201(a)(6)(A), substituted in heading, ''In general'' for ''Up to 8 countries'' and in text substituted ''any country as a pilot program country if it meets the requirements of paragraph (2)'' for ''up to eight countries as pilot program countries for purposes of the pilot program''.

Subsec. (c)(2). Pub. L. 101–649, § 201(a)(6)(B), substituted ''Qualifications'' for ''Initial qualifications'' in heading and ''A country'' for ''For the initial period described in paragraph (4), a country'' in introductory provisions, and added subpars. (C) and (D).

Subsec. (d). Pub. L. 101–649, § 201(a)(7), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–649, § 201(a)(7), (8), redesignated subsec. (d) as (e) and added subpar. (C) at end of par. (1). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–649, § 201(a)(7), (9), redesignated subsec. (e) as (f) and substituted ''on October 1, 1988, and ending on September 30, 1994'' for ''at the end of the 30-day period referred to in subsection (b)(1) of this section and ending on the last day of the third fiscal year which begins after such 30-day period''.

1988—Pub. L. 100–525, § 2(p)(1), made technical amendment to directory language of Pub. L. 99–603, § 313(a), which enacted this section.

Subsec. (a). Pub. L. 100–525, § 2(p)(2), substituted ''hereinafter'' for ''hereafter''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–53, title VII, § 711(d)(2), Aug. 3, 2007, 121 Stat. 345, provided that: ''Section 217(a)(11) of the Immigration and Nationality Act [8 U.S.C. 1187(a)(11)], as added by paragraph (1)(A)(ii), shall take effect on the date that is 60 days after the date on which the Secretary of Homeland Security publishes notice in the Federal Register of the requirement under such paragraph. [Notice published in Federal Register, Nov. 13, 2008, 73 F.R. 67354.]''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(F), (e)(9) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 303(a)(1), (2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 201(d) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1323 of this title] shall take effect as of the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

MODERNIZING AND STRENGTHENING OF SECURITY OF VISA WAIVER PROGRAM

Pub. L. 110–53, title VII, § 711(b), Aug. 3, 2007, 121 Stat. 338, provided that: ''It is the sense of Congress that—

''(1) the United States should modernize and strengthen the security of the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) by simultaneously—

''(A) enhancing program security requirements; and

''(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

''(i) that are actively cooperating with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information; and

''(ii) whose nationals have demonstrated their compliance with the provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] regarding the purpose and duration of their admission to the United States; and

''(2) the modernization described in paragraph (1) will—

''(A) enhance bilateral cooperation on critical counterterrorism and information sharing initiatives;

''(B) support and expand tourism and business opportunities to enhance long-term economic competitiveness; and

''(C) strengthen bilateral relationships.''

MACHINE READABLE PASSPORTS

Pub. L. 107–56, title IV, § 417(a), (b), Oct. 26, 2001, 115 Stat. 355, provided that:

''(a) AUDITS.—The Secretary of State shall, each fiscal year until September 30, 2007—

''(1) perform annual audits of the implementation of section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B));

''(2) check for the implementation of precautionary measures to prevent the counterfeiting and theft of passports; and

''(3) ascertain that countries designated under the visa waiver program have established a program to develop tamper-resistant passports.

''(b) PERIODIC REPORTS.—Beginning one year after the date of enactment of this Act [Oct. 26, 2001], and every year thereafter until 2007, the Secretary of State shall submit a report to Congress setting forth the findings of the most recent audit conducted under subsection (a)(1).''

REPORT REQUIRED

Pub. L. 106–396, title IV, § 403(e), Oct. 30, 2000, 114 Stat. 1649, provided that: ''Not later than two years after the date of the enactment of this Act [Oct. 30, 2000], the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate assessing the effectiveness of the program implemented under the amendments made by this section [amending this section] for simplifying the admission of business travelers from visa waiver program countries and compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by such travelers under that program.''

TRANSITION PROVISIONS

Section 635(c)(2) of div. C of Pub. L. 104–208 provided that: ''A country designated as a pilot program country with probationary status under section 217(g) of the Immigration and Nationality Act [8 U.S.C. 1187(g)] (as in effect on the day before the date of the enactment of this Act [Sept. 30, 1996]) shall be considered to be designated as a pilot program country on and after such date, subject to placement in probationary status or termination of such designation under such section (as amended by paragraph (1)).''

OPERATION OF AUTOMATED DATA ARRIVAL AND DEPARTURE CONTROL SYSTEM; REPORT TO CONGRESS

Section 201(c) of Pub. L. 101–649 provided that: ''By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program.''

REPORT ON VISA WAIVER PILOT PROGRAM

Section 405 of Pub. L. 99–603 provided that:

''(a) MONITORING AND REPORT ON THE PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act [8 U.S.C. 1187] and shall report to the Congress not later than two years after the beginning of the program.

''(b) DETAILS IN REPORT.—The report shall include—

''(1) an evaluation of the program, including its impact—

''(A) on the control of alien visitors to the United States,

''(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

''(C) on the United States tourism industry; and

''(2) recommendations—

''(A) on extending the pilot program period, and

''(B) on increasing the number of countries that may be designated under the program.''

§ 1188. Admission of temporary H–2A workers

(a) Conditions for approval of H–2A petitions

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2) of this section) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

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

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) of this section with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H–2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H–2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the

application does not meet the standards (other than that described in subsection (a)(1)(A) of this section) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) of this section if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H–2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H–2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H–2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H–2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Pro-*

vided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) of this section with respect to a petition for the importation of such worker.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) of this section or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H–2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure

employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term ''eligible individual'' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term ''H–2A worker'' means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 218, formerly § 216, as added Pub. L. 99–603, title III, § 301(c), Nov. 6, 1986, 100 Stat. 3411; renumbered § 218 and amended Pub. L. 100–525, § 2(*l*)(2), (3), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 102–232, title III, §§ 307(*l*)(4), 309(b)(8), Dec. 12, 1991, 105 Stat. 1756, 1759; Pub. L. 103–416, title II, § 219(z)(8), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 106–78, title VII, § 748, Oct. 22, 1999, 113 Stat. 1167; Pub. L. 106–554, § 1(a)(1) [title I, § 105], Dec. 21, 2000, 114 Stat. 2763, 2763A–11.)

REFERENCES IN TEXT

Section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(3)(B)(iii), is section 403(a)(4)(D) of Pub. L. 99–603, which is set out in a note under this section.

CODIFICATION

Section was classified to section 1186 of this title prior to its renumbering by Pub. L. 100–525.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106–554 inserted at end ''The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) of this section with respect to a petition for the importation of such worker.''

1999—Subsec. (c)(1). Pub. L. 106–78, § 748(1), substituted ''45 days'' for ''60 days''.

Subsec. (c)(3)(A). Pub. L. 106–78, § 748(2), substituted ''30 days'' for ''20 days'' in introductory provisions.

1994—Subsec. (i)(1). Pub. L. 103–416 made technical correction to directory language of Pub. L. 102–232, § 309(b)(8). See 1991 Amendment note below.

1991—Subsec. (g)(3). Pub. L. 102–232, § 307(*l*)(4), substituted ''section 1182(a)(5)(A)(i)'' for ''section 1182(a)(14)''.

Subsec. (i)(1). Pub. L. 102–232, § 309(b)(8), as amended by Pub. L. 103–416, substituted ''1324a(h)(3)'' for ''1324a(h)''.

1988—Pub. L. 100–525, § 2(*l*)(2)(A), made technical amendment to directory language of Pub. L. 99–603, § 301(c), which enacted this section.

Subsec. (c)(4). Pub. L. 100–525, § 2(*l*)(3), substituted ''accommodations'' for ''accomodations'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(8) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

EFFECTIVE DATE; REGULATIONS

Section 301(d), (e) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that:

''(d) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending sections 1101 and 1184] apply to petitions and applications filed under sections 214(c) and 218 of the Immigration and Nationality Act [8 U.S.C. 1184(c), 1188] on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986] (hereinafter in this section referred to as the 'effective date').

''(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 301(f) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: ''It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188].''

REPORTS ON H–2A PROGRAM

Section 403 of Pub. L. 99–603 provided that:

''(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H–2A) program, which shall include—

''(1) the number of foreign workers permitted to be employed under the program in each year;

''(2) the compliance of employers and foreign workers with the terms and conditions of the program;

''(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

''(4) recommendations for modifications of the program, including—

''(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

''(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

''(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

''(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H–2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H–2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

''(b) DEADLINES.—A report on the H–2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.''

[Functions of President under section 403 of Pub. L. 99–603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism)[1]; and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

[1] So in original. The closing parenthesis probably should follow ''section 1182(a)(3)(B) of this title''.

(2) Procedure

(A) Notice

(i) To congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2339B of title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

(B) Classified information

The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(4) Period of designation

(A) In general

A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section.

(B) Review of designation upon petition

(i) In general

The Secretary shall review the designation of a foreign terrorist organization

under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

(ii) Petition period

For purposes of clause (i)—

(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

(iii) Procedures

Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

(iv) Determination

(I) In general

Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

(II) Classified information

The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(III) Publication of determination

A determination made by the Secretary under this clause shall be published in the Federal Register.

(IV) Procedures

Any revocation by the Secretary shall be made in accordance with paragraph (6).

(C) Other review of designation

(i) In general

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

(ii) Procedures

If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) Publication of results of review

The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

(5) Revocation by Act of Congress

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) Revocation based on change in circumstances

(A) In general

The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or

(ii) the national security of the United States warrants a revocation.

(B) Procedure

The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

(7) Effect of revocation

The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) Use of designation in trial or hearing

If a designation under this subsection has become effective under paragraph (2)(B) a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

(b) Amendments to a designation

(1) In general

The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

(2) Procedure

Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) of this section shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection

(a) of this section shall also apply to an amended designation.

(3) Administrative record

The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

(4) Classified information

The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(c) Judicial review of designation

(1) In general

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

(2) Basis of review

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2),[2] or

(E) not in accord with the procedures required by law.

(4) Judicial review invoked

The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

(d) Definitions

As used in this section—

(1) the term ''classified information'' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term ''national security'' means the national defense, foreign relations, or economic interests of the United States;

(3) the term ''relevant committees'' means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term ''Secretary'' means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 2, § 219, as added Pub. L. 104–132, title III, § 302(a), Apr. 24, 1996, 110 Stat. 1248; amended Pub. L. 104–208, div. C, title III, § 356, title VI, § 671(c)(1), Sept. 30, 1996, 110 Stat. 3009–644, 3009–722; Pub. L. 107–56, title IV, § 411(c), Oct. 26, 2001, 115 Stat. 349; Pub. L. 108–458, title VII, § 7119(a)–(c), Dec. 17, 2004, 118 Stat. 3801, 3802.)

REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (d)(1), is section 1(a) of Pub. L. 96–456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Another section 411(c) of Pub. L. 107–56 enacted provisions set out as an Effective Date of 2001 Amendment note under section 1182 of this title.

AMENDMENTS

2004—Subsec. (a)(3)(B). Pub. L. 108–458, § 7119(c)(1)(A), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (a)(4)(A). Pub. L. 108–458, § 7119(a)(1), substituted ''A designation'' for ''Subject to paragraphs (5) and (6), a designation'' and ''until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section'' for ''for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)''.

Subsec. (a)(4)(B). Pub. L. 108–458, § 7119(a)(2), added subpar. (B) and struck out former subpar. (B) which contained provisions authorizing Secretary to redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subpar. (A) or at the end of any 2-year redesignation period.

Subsec. (a)(4)(C). Pub. L. 108–458, § 7119(a)(3), added subpar. (C).

Subsec. (a)(6)(A). Pub. L. 108–458, § 7119(c)(1)(B)(i), substituted ''at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)'' for ''or a redesignation made under paragraph (4)(B)'' in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 108–458, § 7119(c)(1)(B)(ii), struck out ''or redesignation'' after ''the designation''.

Subsec. (a)(7). Pub. L. 108–458, § 7119(c)(1)(C), struck out '', or the revocation of a redesignation under paragraph (6),'' before ''shall not affect''.

Subsec. (a)(8). Pub. L. 108–458, § 7119(c)(1)(D), struck out '', or if a redesignation under this subsection has become effective under paragraph (4)(B),'' before ''a defendant in a criminal action'' and ''or redesignation'' after ''such designation''.

Subsec. (b). Pub. L. 108–458, § 7119(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–458, § 7119(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108–458, § 7119(c)(2)(A), substituted ''in the Federal Register of a designation, an

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

amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review'' for ''of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation''.

Subsec. (c)(2) to (4). Pub. L. 108–458, § 7119(c)(2)(B)–(D), inserted '', amended designation, or determination in response to a petition for revocation'' after ''designation'' wherever appearing.

Subsec. (d). Pub. L. 108–458, § 7119(b)(1), redesignated subsec. (c) as (d).

2001—Subsec. (a)(1)(B). Pub. L. 107–56, § 411(c)(1), inserted ''or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism'' after ''section 1182(a)(3)(B) of this title''.

Subsec. (a)(1)(C). Pub. L. 107–56, § 411(c)(2), inserted ''or terrorism'' after ''the terrorist activity''.

Subsec. (a)(2)(A). Pub. L. 107–56, § 411(c)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Seven days before making a designation under this subsection, the Secretary shall, by classified communication—

''(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

''(ii) seven days after such notification, publish the designation in the Federal Register.''

Subsec. (a)(2)(B)(i). Pub. L. 107–56, § 411(c)(4), substituted ''subparagraph (A)(ii)'' for ''subparagraph (A)''.

Subsec. (a)(2)(C). Pub. L. 107–56, § 411(c)(5), substituted ''paragraph (2)(A)(i)'' for ''paragraph (2)''.

Subsec. (a)(3)(B). Pub. L. 107–56, § 411(c)(6), substituted ''subsection (b) of this section'' for ''subsection (c) of this section''.

Subsec. (a)(4)(B). Pub. L. 107–56, § 411(c)(7), inserted after first sentence ''The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.''

Subsec. (a)(6)(A). Pub. L. 107–56, § 411(c)(8)(A), inserted ''or a redesignation made under paragraph (4)(B)'' after ''paragraph (1)'' in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 107–56, § 411(c)(8)(B), inserted ''or redesignation'' after ''basis for the designation'' and struck out ''of the designation'' before semicolon.

Subsec. (a)(6)(A)(ii). Pub. L. 107–56, § 411(c)(8)(C), struck out ''of the designation'' before period at end.

Subsec. (a)(6)(B). Pub. L. 107–56, § 411(c)(9), substituted ''and (3)'' for ''through (4)'' and inserted ''Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.'' at end.

Subsec. (a)(7). Pub. L. 107–56, § 411(c)(10), inserted '', or the revocation of a redesignation under paragraph (6),'' after ''paragraph (5) or (6)''.

Subsec. (a)(8). Pub. L. 107–56, § 411(c)(11), substituted ''paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)'' for ''paragraph (1)(B)'' and inserted ''or an alien in a removal proceeding'' after ''criminal action'' and ''or redesignation'' before ''as a defense''.

1996—Pub. L. 104–208, § 671(c)(1), made technical amendment to section catchline.

Subsec. (b)(3)(D), (E). Pub. L. 104–208, § 356, added subpars. (D) and (E).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107–56, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 356 of Pub. L. 104–208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, see section 358 of Pub. L. 104–208, set out as a note under section 1182 of this title.

Section 671(c)(7) of div. C of Pub. L. 104–208 provided that: ''The amendments made by this subsection [amending this section and sections 1105a and 1252a of this title] shall take effect as if included in the enactment of subtitle A of title IV of AEPDA [AEDPA, Pub. L. 104–132].''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

SAVINGS PROVISION

Pub. L. 108–458, title VII, § 7119(d), Dec. 17, 2004, 118 Stat. 3803, provided that: ''For purposes of applying section 219 of the Immigration and Nationality Act [8 U.S.C. 1189] on or after the date of enactment of this Act [Dec. 17, 2004], the term 'designation', as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).''

PART III—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

(1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue

(A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and

(B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101(a)(15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.