ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

ELIMINATION OF TIME LIMITATIONS ON MOTIONS TO REOPEN DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE

Pub. L. 106–386, div. B, title V, § 1506(c)(2), Oct. 28, 2000, 114 Stat. 1528, as amended by Pub. L. 109–162, title VIII, §§ 814(a), 825(b), Jan. 5, 2006, 119 Stat. 3058, 3064, provided that:

''(A)(i) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1101 note))—

''(I) there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—

''(aa) if the basis of the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and

''(bb) if the motion is accompanied by a suspension of deportation application to be filed with the Secretary of Homeland Security or by a copy of the self-petition that will be filed with the Department of Homeland Security upon the granting of the motion to reopen; and

''(II) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)).

''(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[)] pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

''(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who are physically present in the United States and who—

''(i) are, or were, in deportation or exclusion proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

''(ii) have become eligible to apply for relief described in subparagraph (A)(i) as a result of the amendments made by—

''(I) subtitle G [§ 40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification]; or

''(II) this title [see Short Title of 2000 Amendment note set out under section 1101 of this title].''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) Special rule for battered spouse or child

(A) Authority

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title, subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

(B) Physical presence

Notwithstanding subsection (d)(2) of this section, for purposes of subparagraph (A)(ii) or for purposes of section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2) of this section. If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph, subparagraph (A)(ii), and section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) Good moral character

Notwithstanding section 1101(f) of this title, an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(iii) or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(3) Recordation of date

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

(4) Children of battered aliens and parents of battered alien children

(A) In general

The Attorney General shall grant parole under section 1182(d)(5) of this title to any alien who is a—

(i) child of an alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) Duration of parole

The grant of parole shall extend from the time of the grant of relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. Failure by the alien granted relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.

(5) Application of domestic violence waiver authority

The authority provided under section 1227(a)(7) of this title may apply under paragraphs (1)(B), (1)(C), and (2)(A)(iv) in a cancellation of removal and adjustment of status proceeding.

(6) Relatives of trafficking victims

(A) In general

Upon written request by a law enforcement official, the Secretary of Homeland Se-

curity may parole under section 1182(d)(5) of this title any alien who is a relative of an alien granted continued presence under section 7105(c)(3)(A) of title 22, if the relative—

(i) was, on the date on which law enforcement applied for such continued presence—

(I) in the case of an alien granted continued presence who is under 21 years of age, the spouse, child, parent, or unmarried sibling under 18 years of age, of the alien; or

(II) in the case of an alien granted continued presence who is 21 years of age or older, the spouse or child of the alien; or

(ii) is a parent or sibling of the alien who the requesting law enforcement official, in consultation with the Secretary of Homeland Security, as appropriate, determines to be in present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement, irrespective of age.

(B) Duration of parole

(i) In general

The Secretary may extend the parole granted under subparagraph (A) until the final adjudication of the application filed by the principal alien under section 1101(a)(15)(T)(ii) of this title.

(ii) Other limits on duration

If an application described in clause (i) is not filed, the parole granted under subparagraph (A) may extend until the later of—

(I) the date on which the principal alien's authority to remain in the United States under section 7105(c)(3)(A) of title 22 is terminated; or

(II) the date on which a civil action filed by the principal alien under section 1595 of title 18 is concluded.

(iii) Due diligence

Failure by the principal alien to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) of subparagraph (A), or in pursuing the civil action described in clause (ii)(II) (as determined by the Secretary of Homeland Security in consultation with the Attorney General), may result in revocation of parole.

(C) Other limitations

A relative may not be granted parole under this paragraph if—

(i) the Secretary of Homeland Security or the Attorney General has reason to believe that the relative was knowingly complicit in the trafficking of an alien permitted to remain in the United States under section 7105(c)(3)(A) of title 22; or

(ii) the relative is an alien described in paragraph (2) or (3) of section 1182(a) of this title or paragraph (2) or (4) of section 1227(a) of this title.

(c) Aliens ineligible for relief

The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.

(3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a) of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

(d) Special rules relating to continuous residence or physical presence

(1) Termination of continuous period

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B) when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

(2) Treatment of certain breaks in presence

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service

The requirements of continuous residence or continuous physical presence in the United States under subsections (a) and (b) of this section shall not apply to an alien who—

(A) has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B) at the time of the alien's enlistment or induction was in the United States.

(e) Annual limitation

(1) Aggregate limitation

Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such section 1254(a) of this title.

(2) Fiscal year 1997

For fiscal year 1997, paragraph (1) shall only apply to decisions to cancel the removal of an alien, or suspend the deportation of an alien, made after April 1, 1997. Notwithstanding any other provision of law, the Attorney General may cancel the removal or suspend the deportation, in addition to the normal allotment for fiscal year 1998, of a number of aliens equal to 4,000 less the number of such cancellations of removal and suspensions of deportation granted in fiscal year 1997 after April 1, 1997.

(3) Exception for certain aliens

Paragraph (1) shall not apply to the following:

(A) Aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act).

(B) Aliens in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation under section 1254(a)(3) of this title (as in effect before September 30, 1996).

(June 27, 1952, ch. 477, title II, ch. 4, § 240A, as added Pub. L. 104–208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009–594; amended Pub. L. 105–100, title II, § 204(a)–(c), Nov. 19, 1997, 111 Stat. 2200, 2201; Pub. L. 106–386, div. B, title V, §§ 1504(a), (b), 1505(b)(2), 1506(b)(1), Oct. 28, 2000, 114 Stat. 1522, 1524, 1525, 1527; Pub. L. 109–162, title VIII, §§ 813(c)(1), 822(a), (b), Jan. 5, 2006, 119 Stat. 3058, 3062, 3063; Pub. L. 109–271, § 6(e), Aug. 12, 2006, 120 Stat. 763; Pub. L. 110–457, title II, § 205(b), Dec. 23, 2008, 122 Stat. 5062.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsecs. (b)(2)(B), (C), (4), (c)(6), and (e)(1), (3)(B), was repealed by Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615.

Section 1182(c) of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104–208, div. C, title III, § 304(b), Sept. 30, 1996, 110 Stat. 3009–597.

Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsecs. (b)(2)(B), (C), (4), and (e)(3)(A), is section 309 of title III of div. C of Pub. L. 104–208, as amended, which is set out as a note under section 1101 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–457 added par. (6).

2006—Subsec. (b)(1)(C). Pub. L. 109–162, § 813(c)(1)(A), substituted ", subject to paragraph (5)" for "(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)".

Subsec. (b)(2)(A)(iv). Pub. L. 109–162, § 813(c)(1)(B), substituted ", subject to paragraph (5)" for "(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)".

Subsec. (b)(2)(B). Pub. L. 109–162, § 822(a)(2), which directed amendment of fourth sentence by substituting "this subparagraph, subparagraph (A)(ii)," for "subsection (b)(2)(B) of this section", was executed by making the substitution for language which read in the original "section 240A(b)(2)(B)", to reflect the probable intent of Congress.

Pub. L. 109–162, § 822(a)(1), substituted "(A)(ii)" for "(A)(i)(II)" in first sentence.

Subsec. (b)(2)(C). Pub. L. 109–162, § 822(b), substituted "(A)(iii)" for "(A)(i)(III)".

Subsec. (b)(4)(B). Pub. L. 109–271 substituted "the applicants were VAWA self-petitioners" for "they were applications filed under section 1154(a)(1)(A)(iii), (A)(iv), (B)(ii), or (B)(iii) of this title for purposes of section 1255 (a) and (c) of this title".

Subsec. (b)(5). Pub. L. 109–162, § 813(c)(1)(C), added par. (5).

2000—Subsec. (b)(1)(C). Pub. L. 106–386, § 1505(b)(2), inserted before semicolon "(except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver)".

Subsec. (b)(2). Pub. L. 106–386, § 1504(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "(2) The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

"(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);

"(B) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;

"(C) the alien has been a person of good moral character during such period;

"(D) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraph (1)(G) or (2) through (4) of section 1227(a) of this title, and has not been convicted of an aggravated felony; and

"(E) the removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General."

Subsec. (b)(4). Pub. L. 106–386, § 1504(b), added par. (4).

Subsec. (d)(1). Pub. L. 106–386, § 1506(b)(1), substituted "(A) except in the case of an alien who applies for can-

cellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B)'' for ''when the alien is served a notice to appear under section 1229(a) of this title or''.

1997—Subsec. (b)(1), (2). Pub. L. 105–100, § 204(b), in introductory provisions, substituted ''may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien'' for ''may cancel removal in the case of an alien''.

Subsec. (b)(3). Pub. L. 105–100, § 204(c), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The Attorney General may adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of paragraph (1) or (2). The number of adjustments under this paragraph shall not exceed 4,000 for any fiscal year. The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General's cancellation of removal under paragraph (1) or (2) or determination under this paragraph.''

Subsec. (e). Pub. L. 105–100, § 204(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–386, div. B, title V, § 1504(c), Oct. 28, 2000, 114 Stat. 1524, provided that: ''Any individual who becomes eligible for relief by reason of the enactment of the amendments made by subsections (a) and (b) [amending this section], shall be eligible to file a motion to reopen pursuant to section 240(c)(6)(C)(iv) [now 8 U.S.C. 1229a(c)(7)(C)(iv)]. The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 587 [3009–587]). Such portions of the amendments made by subsection (b) that relate to section 244(a)(3) [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) shall take effect as if included in subtitle G [§ 40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification].''

Pub. L. 106–386, div. B, title V, § 1506(b)(2), Oct. 28, 2000, 114 Stat. 1527, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 587 [3009–587]).''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 204(e) of Pub. L. 105–100 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–546).''

EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 180 days after Sept. 30, 1996, with certain transitional provisions including provision that subsec. (d)(1), (2) of this section be applicable to notices to appear issued before, on, or after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

DISCRETION TO CONSENT TO AN ALIEN'S REAPPLICATION FOR ADMISSION

Pub. L. 109–162, title VIII, § 813(b), Jan. 5, 2006, 119 Stat. 3058, provided that:

''(1) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of State shall continue to have discretion to consent to an alien's reapplication for admission after a previous order of removal, deportation, or exclusion.

''(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994 [Pub. L. 103–322, title IV, see Tables for classification], cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) [8 U.S.C. 1229b(b)(2)] or 244(a)(3) [8 U.S.C. 1254(a)(3)] of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.''

DEFINITIONS

For definition of the term ''removable'' used in subsec. (d)(1), see section 1229a(e) of this title.

§ 1229c. Voluntary departure

(a) Certain conditions

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 1229a of this title or prior to the completion of such proceedings, if the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4)(B) of this title.

(2) Period

(A) In general

Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.

(B) Three-year pilot program waiver

During the period October 1, 2000, through September 30, 2003, and subject to subparagraphs (C) and (D)(ii), the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

(i) who was admitted to the United States as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) under the provisions of the visa waiver pilot program established pursuant to section 1187 of this title, seeks the waiver for the purpose of continuing to receive medical treatment in the United States from a physician associated with a health care facility, and submits to the Attorney General—