

under subsection (a)(2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than two years from the date of issuance and shall not be renewable. The permit shall be in such form as shall be by regulations prescribed for the complete identification of the alien.

(c) Multiple reentries

During the period of validity, such permit may be used by the alien in making one or more applications for reentry into the United States.

(d) Presented and surrendered

Upon the return of the alien to the United States the permit shall be presented to the immigration officer at the port of entry, and upon the expiration of its validity, the permit shall be surrendered to the Service.

(e) Permit in lieu of visa

A permit issued under this section in the possession of the person to whom issued, shall be accepted in lieu of any visa which otherwise would be required from such person under this chapter. Otherwise a permit issued under this section shall have no effect under the immigration laws except to show that the alien to whom it was issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

(June 27, 1952, ch. 477, title II, ch. 3, § 223, 66 Stat. 194; Pub. L. 97-116, § 6, Dec. 29, 1981, 95 Stat. 1615.)

REFERENCES IN TEXT

Clause (6) of section 3 of the Immigration Act of 1924, referred to in subsec. (a), which was classified to section 203(6) of this title, was repealed by section 403(a)(2) of act June 27, 1952. See section 1101(a)(15)(E) of this title.

This chapter, referred to in subsec. (e), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97-116 substituted "two years from the date of issuance and shall not be renewable" for "one year from the date of issuance: *Provided*, That the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

§ 1204. Immediate relative and special immigrant visas

A consular officer may, subject to the limitations provided in section 1201 of this title, issue an immigrant visa to a special immigrant or immediate relative as such upon satisfactory proof, under regulations prescribed under this chapter, that the applicant is entitled to special immigrant or immediate relative status.

(June 27, 1952, ch. 477, title II, ch. 3, § 224, 66 Stat. 195; Pub. L. 89-236, § 11(d), Oct. 3, 1965, 79 Stat. 918.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

AMENDMENTS

1965—Pub. L. 89-236 struck out reference to sections 1154 and 1155 of this title and substituted "special immigrant or immediate relative" for "nonquota immigrant".

EFFECTIVE DATE OF 1965 AMENDMENT

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

§ 1205. Repealed. Pub. L. 87-301, § 24(a)(2), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85-316, § 4, Sept. 11, 1957, 71 Stat. 639; Pub. L. 86-253, § 2, Sept. 9, 1959, 73 Stat. 490; Pub. L. 86-648, § 7, July 14, 1960, 74 Stat. 505, related to nonquota immigrant visas for eligible orphans.

PART IV—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

§ 1221. Lists of alien and citizen passengers arriving and departing

(a) Arrival manifests

For each commercial vessel or aircraft transporting any person to any seaport or airport of the United States from any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) of this section to provide to any United States border officer (as defined in subsection (i) of this section) at that port manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port.

(b) Departure manifests

For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) of this section to provide any United States border officer (as defined in subsection (i) of this section) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

(c) Contents of manifest

The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) of this section shall include—

- (1) complete name;
- (2) date of birth;
- (3) citizenship;
- (4) sex;
- (5) passport number and country of issuance;
- (6) country of residence;
- (7) United States visa number, date, and place of issuance, where applicable;
- (8) alien registration number, where applicable;
- (9) United States address while in the United States; and

(10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) Appropriate officials specified

An appropriate official specified in this subsection is the master or commanding officer, or authorized agent, owner, or consignee, of the commercial vessel or aircraft concerned.

(e) Deadline for requirement of electronic transmission of manifest information

Not later than January 1, 2003, manifest information required to be provided under subsection (a) or (b) of this section shall be transmitted electronically by the appropriate official specified in subsection (d) of this section to an immigration officer.

(f) Prohibition

No operator of any private or public carrier that is under a duty to provide manifest information under this section shall be granted clearance papers until the appropriate official specified in subsection (d) of this section has complied with the requirements of this subsection, except that, in the case of commercial vessels or aircraft that the Attorney General determines are making regular trips to the United States, the Attorney General may, when expedient, arrange for the provision of manifest information of persons departing the United States at a later date.

(g) Penalties against noncomplying shipments, aircraft, or carriers

If it shall appear to the satisfaction of the Attorney General that an appropriate official specified in subsection (d) of this section, any public or private carrier, or the agent of any transportation line, as the case may be, has refused or failed to provide manifest information required by subsection (a) or (b) of this section, or that the manifest information provided is not accurate and full based on information provided to the carrier, such official, carrier, or agent, as the case may be, shall pay to the Commissioner the sum of \$1,000 for each person with respect to whom such accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as pre-

scribed by this section or by regulations issued pursuant thereto. No commercial vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the Commissioner of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(h) Waiver

The Attorney General may waive the requirements of subsection (a) or (b) of this section upon such circumstances and conditions as the Attorney General may by regulation prescribe.

(i) United States border officer defined

In this section, the term “United States border officer” means, with respect to a particular port of entry into the United States, any United States official who is performing duties at that port of entry.

(j) Record of citizens and resident aliens leaving permanently for foreign countries

The Attorney General may authorize immigration officers to record the following information regarding every resident person leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Names, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen or national, the facts on which claim to that status is based.

(June 27, 1952, ch. 477, title II, ch. 4, §231, 66 Stat. 195; Pub. L. 97-116, §18(g), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 101-649, title V, §543(a)(1), Nov. 29, 1990, 104 Stat. 5057; Pub. L. 102-232, title III, §306(c)(4)(A), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 104-208, div. C, title III, §308(g)(1), Sept. 30, 1996, 110 Stat. 3009-622; Pub. L. 107-77, title I, §115, Nov. 28, 2001, 115 Stat. 768; Pub. L. 107-173, title IV, §402(a), May 14, 2002, 116 Stat. 557.)

AMENDMENTS

2002—Pub. L. 107-173 added subsecs. (a) to (i), redesignated former subsec. (c) as (j), and struck out former subsecs. (a), (b), (d), and (e), which related to shipment or aircraft manifest, arrival, form and contents, exclusions in subsec. (a), departure, shipment or aircraft manifest, form and contents, and exclusions in subsec. (b), penalties against noncomplying shipments or aircraft in subsec. (d), and waiver of requirements in subsec. (e).

2001—Subsec. (a). Pub. L. 107-77, §115(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: “Upon the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any such person on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests of the persons on board such vessel or aircraft. Such lists or manifests shall be prepared at such time, be in such form and shall contain such information as the Attorney General shall prescribe by reg-

ulation as being necessary for the identification of the persons transported and for the enforcement of the immigration laws. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person arriving by air on a trip originating in foreign contiguous territory, except (with respect to such arrivals by air) as may be required by regulations issued pursuant to section 1224 of this title.”

Subsec. (b). Pub. L. 107-77, §115(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “It shall be the duty of the master or commanding officer or authorized agent of every vessel or aircraft taking passengers on board at any port of the United States, who are destined to any place outside the United States, to file with the immigration officers before departure from such port a list of all such persons taken on board. Such list shall be in such form, contain such information, and be accompanied by such documents, as the Attorney General shall prescribe by regulation as necessary for the identification of the persons so transported and for the enforcement of the immigration laws. No master or commanding officer of any such vessel or aircraft shall be granted clearance papers for his vessel or aircraft until he or the authorized agent has deposited such list or lists and accompanying documents with the immigration officer at such port and made oath that they are full and complete as to the information required to be contained therein, except that in the case of vessels or aircraft which the Attorney General determines are making regular trips to ports of the United States, the Attorney General may, when expedient, arrange for the delivery of lists of outgoing persons at a later date. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person departing by air on a trip originating in the United States who is destined to foreign contiguous territory, except (with respect to such departure by air) as may be required by regulations issued pursuant to section 1224 of this title.”

Subsec. (d). Pub. L. 107-77, §115(c), directed amendment of heading by substituting “shipments, aircraft or carriers” for “shipments or aircraft” and, in text inserted “, any public or private carrier,” after “or aircraft,” in first sentence and substituted “vessel, aircraft, train or bus” for “vessel or aircraft” in second sentence.

1996—Subsecs. (a), (b). Pub. L. 104-208 substituted “section 1224” for “section 1229”.

1991—Subsec. (d). Pub. L. 102-232 substituted “Commissioner” for “collector of customs” after “deposit with the”.

1990—Subsec. (d). Pub. L. 101-649 substituted “Commissioner the sum of \$300” for “collector of customs at the port of arrival or departure the sum of \$10”.

1981—Subsec. (d). Pub. L. 97-116 substituted “subsection” for “subsections”.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-173, title IV, §402(c), May 14, 2002, 116 Stat. 559, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of this Act [May 14, 2002].”

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub.

L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 543(c) of Pub. L. 101-649 provided that: “The amendments made by subsections (a) and (b) [amending this section and sections 1227, 1229, 1282, 1284 to 1287, 1321 to 1323, and 1325 to 1328 of this title] shall apply to actions taken after the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

EXTENSION TO LAND CARRIERS

Pub. L. 107-173, title IV, §402(b), May 14, 2002, 116 Stat. 559, provided that:

“(1) STUDY.—The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

“(2) REPORT.—Not later than two years after the date of enactment of this Act [May 14, 2002], the President shall submit to Congress a report setting forth the findings of the study conducted under paragraph (1).”

§ 1222. Detention of aliens for physical and mental examination

(a) Detention of aliens

For the purpose of determining whether aliens (including alien crewmen) arriving at ports of the United States belong to any of the classes inadmissible under this chapter, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities set forth in section 1182(a) of this title, or whenever the Attorney General has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic, such aliens shall be detained by the Attorney General for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to inadmissible classes.

(b) Physical and mental examination

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the immigration judges, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four

years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be inadmissible under paragraph (1) of section 1182(a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraph (1) of section 1182(a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(c) Certification of certain helpless aliens

If an examining medical officer determines that an alien arriving in the United States is inadmissible, is helpless from sickness, mental or physical disability, or infancy, and is accompanied by another alien whose protection or guardianship may be required, the officer may certify such fact for purposes of applying section 1182(a)(10)(B) of this title with respect to the other alien.

(June 27, 1952, ch. 477, title II, ch. 4, § 232, 66 Stat. 196; Pub. L. 99-500, § 101(b) [title II, § 206(a), formerly § 206], Oct. 18, 1986, 100 Stat. 1783-39, 1783-56, renumbered § 206(a), Pub. L. 100-525, § 4(b)(1), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 99-591, § 101(b) [title II, § 206], Oct. 30, 1986, 100 Stat. 3341-39, 3341-56; Pub. L. 100-525, § 4(b)(2), (d), Oct. 24, 1988, 102 Stat. 2615; Pub. L. 104-208, div. C, title III, §§ 308(b)(2), (3)(C), (c)(2)(A), (d)(4)(H), Sept. 30, 1996, 110 Stat. 3009-615, 3009-616, 3009-618.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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

The text of section 1224 of this title, which was transferred to subsec. (b) of this section by Pub. L. 104-208, § 308(b)(3)(C), was based on acts June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198; Oct. 24, 1988, Pub. L. 100-525, § 9(k), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101-649, title VI, § 603(a)(10), 104 Stat. 5083; Sept. 30, 1996, Pub. L. 104-208, div. C, title III, §§ 308(b)(3)(A), (B), (d)(3)(A), 371(b)(3), 110 Stat. 3009-615, 3009-617, 3009-645.

AMENDMENTS

1996—Pub. L. 104-208, § 308(b)(2)(B), amended section catchline generally.

Pub. L. 104-208, § 308(b)(2)(A), inserted "(a) Detention of aliens" before "For the purpose of".

Subsec. (a). Pub. L. 104-208, § 308(d)(4)(H), substituted "inadmissible under" for "excluded by" and "inadmissible classes" for "the excluded classes".

Subsec. (b). Pub. L. 104-208, § 308(b)(3)(C), transferred section 1224 of this title to subsec. (b) of this section. See Codification note above.

Subsec. (c). Pub. L. 104-208, § 308(c)(2)(A), added subsec. (c).

1988—Pub. L. 100-525, § 4(b)(1), (2), amended Pub. L. 99-500 and 99-591. See 1986 Amendment note below.

1986—Pub. L. 99-500, § 101(b) [title II, § 206(a), formerly § 206], as redesignated and amended by Pub. L. 100-525, § 4(b)(1), (2), substituted "by the Attorney General" for "on board the vessel or at the airport of arrival of the aircraft bringing them, unless the Attorney General directs their detention in a United States immigration station or other place specified by him at the expense of such vessel or aircraft except as otherwise provided in this chapter, as circumstances may require or justify,".

Pub. L. 99-591, § 101(b) [title II, § 206], a corrected version of Pub. L. 99-500, § 101(b) [title II, § 206(a)], was repealed by Pub. L. 100-525, § 4(d), effective as of Oct. 30, 1986.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(b)(2), (3)(C), (c)(2)(A), (d)(4)(H) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 4(c) of Pub. L. 100-525 provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 1223, 1227, and 1356 of this title and enacting provisions set out as a note under section 1356 of this title] shall be effective as if they were included in the enactment of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500)."

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

DESIGNATION OF UNITED STATES MILITARY PHYSICIANS AS CIVIL SURGEONS

Pub. L. 102-484, div. A, title X, § 1079, Oct. 23, 1992, 106 Stat. 2514, as amended by Pub. L. 104-208, div. C, title III, § 308(g)(1), Sept. 30, 1996, 110 Stat. 3009-622, provided that: "Notwithstanding any other provision of law, United States military physicians with not less than four years professional experience shall be considered to be civil surgeons for the purpose of the performance of physical examinations required under section 232(b) of the Immigration and Nationality Act (8 U.S.C. 1224 [8 U.S.C. 1222(b)]) of special immigrants described in section 101(a)(27)(K) of such Act (8 U.S.C. 1101(a)(27)(K))."

§ 1223. Entry through or from foreign territory and adjacent islands

(a) Necessity of transportation contract

The Attorney General shall have power to enter into contracts with transportation lines for the inspection and admission of aliens coming to the United States from foreign territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered

into any such contracts which may be required by the Attorney General.

(b) Landing stations

Every transportation line engaged in carrying alien passengers for hire to the United States from foreign territory or from adjacent islands shall provide and maintain at its expense suitable landing stations, approved by the Attorney General, conveniently located at the point or points of entry. No such transportation line shall be allowed to land any alien passengers in the United States until such landing stations are provided, and unless such stations are thereafter maintained to the satisfaction of the Attorney General.

(c) Landing agreements

The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this chapter, such aliens may not have their classification changed under section 1258 of this title.

(d) Definitions

As used in this section the terms “transportation line” and “transportation company” include, but are not limited to, the owner, charterer, consignee, or authorized agent operating any vessel or aircraft or railroad train bringing aliens to the United States, to foreign territory, or to adjacent islands.

(June 27, 1952, ch. 477, title II, ch. 4, § 233, formerly § 238, 66 Stat. 202; Pub. L. 99-653, § 7(b), Nov. 14, 1986, 100 Stat. 3657; renumbered § 233 and amended Pub. L. 104-208, div. C, title III, § 308(b)(4), (f)(4), 362, Sept. 30, 1996, 110 Stat. 3009-615, 3009-622, 3009-645.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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 formerly classified to section 1228 of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS

A prior section 1223, act June 27, 1952, ch. 477, title II, ch. 4, § 233, 66 Stat. 197, related to examinations of aliens upon arrival in the United States, prior to repeal by Pub. L. 99-500, § 101(b) [title II, § 206(a), formerly § 206], Oct. 18, 1986, 100 Stat. 1783-39, 1783-56; renumbered § 206(a) and amended Pub. L. 100-525, § 4(b)(1), (3), Oct. 24, 1988, 102 Stat. 2615.

AMENDMENTS

1996—Pub. L. 104-208, § 362(a)(1), amended section catchline.

Subsec. (a). Pub. L. 104-208, § 362(a)(2), struck out “contiguous” after “foreign”.

Pub. L. 104-208, § 308(f)(4), substituted “inspection and admission” for “entry and inspection”.

Subsec. (b). Pub. L. 104-208, § 362(a)(2), struck out “contiguous” after “foreign”.

Subsec. (d). Pub. L. 104-208, § 362(b), inserted “or railroad train” after “aircraft”.

Pub. L. 104-208, § 362(a)(2), struck out “contiguous” after “foreign”.

1986—Pub. L. 99-653 struck out subsec. (a) which authorized the Attorney General to enter into contracts with transportation lines for the entry and inspection of aliens and to prescribe regulations, and redesignated subsecs. (b) to (e) as (a) to (d), respectively.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(b)(4), (f)(4) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99-653, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1224. Designation of ports of entry for aliens arriving by aircraft

The Attorney General is authorized (1) by regulation to designate as ports of entry for aliens arriving by aircraft any of the ports of entry for civil aircraft designated as such in accordance with law; (2) by regulation to provide such reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing, or notice of landing, as shall be deemed necessary for purposes of administration and enforcement of this chapter; and (3) by regulation to provide for the application to civil air navigation of the provisions of this chapter where not expressly so provided in this chapter to such extent and upon such conditions as he deems necessary. Any person who violates any regulation made under this section shall be subject to a civil penalty of \$2,000 which may be remitted or mitigated by the Attorney General in accordance with such proceedings as the Attorney General shall by regulation prescribe. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft, and such aircraft may be libeled therefore in the appropriate United States court. The determination by the Attorney General and remission or mitigation of the civil penalty shall be final. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft and may be collected by proceedings in rem which shall conform as nearly as may be to civil suits in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings against aircraft in any particular not otherwise provided by law. Any aircraft made subject to a lien by this section may be summarily seized by, and placed in the custody of such persons as the Attorney General may by regulation prescribe. The aircraft may be re-

leased from such custody upon deposit of such amount not exceeding \$2,000 as the Attorney General may prescribe, or of a bond in such sum and with such sureties as the Attorney General may prescribe, conditioned upon the payment of the penalty which may be finally determined by the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 4, §234, formerly §239, 66 Stat. 203; Pub. L. 101-649, title V, §543(a)(3), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 102-232, title III, §306(c)(2), Dec. 12, 1991, 105 Stat. 1752; renumbered §234, Pub. L. 104-208, div. C, title III, §304(a)(1), Sept. 30, 1996, 110 Stat. 3009-587.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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 formerly classified to section 1229 of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS

A prior section 1224, act June 27, 1952, ch. 477, title II, ch. 4, §234, 66 Stat. 198, as amended, which related to physical and mental examinations, was renumbered section 232(b) of act June 27, 1952, by Pub. L. 104-208, div. C, title III, §308(b)(3), Sept. 30, 1996, 110 Stat. 3009-615, and was transferred to section 1222(b) of this title.

AMENDMENTS

1991—Pub. L. 102-232 made technical correction to directory language of Pub. L. 101-649. See 1990 Amendment note below.

1990—Pub. L. 101-649, as amended by Pub. L. 102-232, substituted “\$2,000” for “\$500” in two places.

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States

waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B) of this section. A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B) of this section. In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant’s intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to

apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request

for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) “Asylum officer” defined

As used in this paragraph, the term “asylum officer” means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens**(A) In general**

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

- (i) who is a crewman,
- (ii) to whom paragraph (1) applies, or
- (iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds**(1) Removal without further hearing**

If an immigration officer or an immigration judge suspects that an arriving alien may be

inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien’s representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections**(1) Authority to search conveyances**

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198; Pub. L. 101-649, title VI, § 603(a)(11), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104-132, title IV, §§ 422(a), 423(b), Apr. 24, 1996, 110 Stat. 1270, 1272; Pub. L. 104-208, div. C, title III, §§ 302(a), 308(d)(5), 371(b)(4), Sept. 30, 1996, 110 Stat. 3009-579, 3009-619, 3009-645; Pub. L. 110-229, title VII, § 702(j)(5), May 8, 2008, 122 Stat. 867.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(3), (4)(A), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

AMENDMENTS

2008—Subsec. (b)(1)(G). Pub. L. 110-229 added subpar. (G).

1996—Pub. L. 104-208, § 302(a), amended section generally, revising and restating former subsecs. (a) to (d) relating to inspection of aliens arriving in the United States, powers of immigration officers, detention of aliens for further inquiry, temporary and permanent exclusion of aliens, and collateral attacks on orders of exclusion and deportation.

Pub. L. 104-208, § 371(b)(4), substituted “an immigration judge” for “a special inquiry officer”, “immigration judge” for “special inquiry officer”, and “immigration judges” for “special inquiry officers”, wherever appearing in subsecs. (a) to (c).

Subsec. (b). Pub. L. 104-132, § 422(a), which directed the general amendment of subsec. (b) by substituting pars. (1) to (3) relating to asylum interviews and hearings, detention for further inquiry, and challenges of favorable decisions, for former subsec. (b) consisting of single par., was repealed by Pub. L. 104-208, § 308(d)(5). See Construction of 1996 Amendment note below.

Subsec. (d). Pub. L. 104-132, § 423(b), added subsec. (d) which read as follows: “In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 1325 or section 1326 of this title, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 1226 and 1252 of this title.”

1990—Subsec. (c). Pub. L. 101-649 substituted “subparagraph (A) (other than clause (ii)), (B), or (C) of sec-

tion 1182(a)(3) of this title” for “paragraph (27), (28), or (29) of section 1182(a) of this title”.

EFFECTIVE DATE OF 2008 AMENDMENT

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 1996 AMENDMENTS

Amendment by section 302(a) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 308(d)(5) of div. C of Pub. L. 104-208 provided that the amendment made by that section is effective as of Apr. 24, 1996. See Construction of 1996 Amendment note below.

Amendment by section 371(b)(4) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 422(c) of Pub. L. 104-132, which provided that the amendments made by section 422 of Pub. L. 104-132 [amending this section and former section 1227 of this title] were to take effect on the first day of the first month that began more than 180 days after Apr. 24, 1996, was repealed by Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619. See Construction of 1996 Amendment note below.

EFFECTIVE DATE OF 1990 AMENDMENT

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

CONSTRUCTION OF 1996 AMENDMENT

Section 308(d)(5) of div. C of Pub. L. 104-208 provided that: “Effective as of the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104-132, approved Apr. 24, 1996], section 422 of such Act [amending this section and section 1227 of this title, and enacting provisions set out as a note above] is repealed and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

GAO STUDY ON OPERATION OF EXPEDITED REMOVAL PROCEDURES

Section 302(b) of div. C of Pub. L. 104-208 provided that:

“(1) STUDY.—The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1225(b)(1)], as amended by subsection (a). The study shall examine—

“(A) the effectiveness of such procedures in deterring illegal entry,

“(B) the detention and adjudication resources saved as a result of the procedures,

“(C) the administrative and other costs expended to comply with the provision,

“(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

“(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.

“(2) REPORT.—By not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996], the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1).”

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

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

§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

(1) NEW STATIONS.—Subject to paragraph (5), not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established prior to September 30, 1996.

(2) REPORT.—Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and of the Senate on the implementation of paragraph (1).

(3) DATA COLLECTION.—Not later than November 1, 1997, and each subsequent November 1, the Attorney General shall compile data identifying—

(A) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal years;

(B) the number and nationality of such aliens arriving from each such foreign airport; and

(C) the primary routes such aliens followed from their country of origin to the United States.

(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).

(5) CONDITIONS.—Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection;

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967), or that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) Establishment of carrier consultant program and immigration security initiative

The Secretary of Homeland Security shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained pursuant to subsection (a)(3) of this section, served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists. Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.

(June 27, 1952, ch. 477, title II, ch. 4, §235A, as added Pub. L. 104-208, div. C, title I, §123(a), Sept. 30, 1996, 110 Stat. 3009-560; amended Pub. L. 108-458, title VII, §§7206(a), 7210(d)(1), Dec. 17, 2004, 118 Stat. 3817, 3825.)

CODIFICATION

September 30, 1996, referred to in subsec. (a)(1), was in the original “the date of the enactment of such Act”, which was translated as meaning the date of enactment of Pub. L. 104-208, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108-458, §7210(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “(4) ADDITIONAL STATIONS.—Subject to paragraph (5), not later than October 31, 2000, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).”

Subsec. (b). Pub. L. 108-458, §7206(a), inserted “and immigration security initiative” after “program” in heading, substituted “Secretary of Homeland Security” for “Attorney General” in text, and inserted at end “Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS

Pub. L. 108-458, title VII, §7210(a), (b), Dec. 17, 2004, 118 Stat. 3824, provided that:

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

“(1) The exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits.

“(2) The further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the Federal Government should exchange terrorist information with trusted allies;

“(2) the Federal Government should move toward real-time verification of passports with issuing authorities;

“(3) where practicable, the Federal Government should conduct screening before a passenger departs on a flight destined for the United States;

“(4) the Federal Government should work with other countries to ensure effective inspection regimes at all airports;

“(5) the Federal Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

“(6) the Department of Homeland Security, in coordination with the Department of State and other Federal agencies, should implement the initiatives called for in this subsection.”

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense¹ to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall

¹ So in original. Probably should be “sentenced”.

provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

(June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200; Pub. L. 101-649, title V, § 504(b), title VI, § 603(a)(12), Nov. 29, 1990, 104 Stat. 5050, 5083; Pub. L. 102-232, title III, § 306(a)(5), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104-208, div. C, title III, §§ 303(a), 371(b)(5), Sept. 30, 1996, 110 Stat. 3009-585, 3009-645.)

AMENDMENTS

1996—Pub. L. 104-208, § 303(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) related to proceedings to determine whether aliens detained under section 1225 of this title should be allowed to enter or should be excluded and deported.

Subsecs. (a) to (d). Pub. L. 104-208, § 371(b)(5), substituted "An immigration judge" for "A special inquiry officer", "an immigration judge" for "a special inquiry officer", and "immigration judge" for "special inquiry officer", wherever appearing.

1991—Subsec. (e)(1). Pub. L. 102-232 substituted "upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)" for "upon completion of the alien's sentence for such conviction".

1990—Subsec. (d). Pub. L. 101-649, § 603(a)(12), substituted "has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of section 1182(a) of this title" for "is afflicted with a disease specified in section 1182(a)(6) of this title, or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1) to (4) or (5) of section 1182(a) of this title" and struck out at end "If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 1182(a)(6) of this title, the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 1183 of this title may be invoked."

Subsec. (e). Pub. L. 101-649, § 504(b), added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 303(b) of subtitle A of title III of div. C of Pub. L. 104-208 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall become effective on the title III-A effective date [see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title].

"(2) NOTIFICATION REGARDING CUSTODY.—If the Attorney General, not later than 10 days after the date of the enactment of this Act [Sept. 30, 1996], notifies in writing the Committees on the Judiciary of the House of Representatives and the Senate that there is insufficient detention space and Immigration and Naturalization Service personnel available to carry out section 236(c) of the Immigration and Nationality Act [8 U.S.C. 1226(c)], as amended by subsection (a), or the amendments made by section 440(c) of Public Law 104-132 [amending section 1252 of this title], the provisions in paragraph (3) shall be in effect for a 1-year period beginning on the date of such notification, instead of such section or such amendments. [The Attorney Gen-

eral so notified the committees on Oct. 9, 1996.] The Attorney General may extend such 1-year period for an additional year if the Attorney General provides the same notice not later than 10 days before the end of the first 1-year period. After the end of such 1-year or 2-year periods, the provisions of such section 236(c) shall apply to individuals released after such periods.

"(3) TRANSITION PERIOD CUSTODY RULES.—

"(A) IN GENERAL.—During the period in which this paragraph is in effect pursuant to paragraph (2), the Attorney General shall take into custody any alien who—

"(i) has been convicted of an aggravated felony (as defined under section 101(a)(43) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(43)], as amended by section 321 of this division),

"(ii) is inadmissible by reason of having committed any offense covered in section 212(a)(2) of such Act [8 U.S.C. 1182(a)(2)],

"(iii) is deportable by reason of having committed any offense covered in section 241(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of such Act [former 8 U.S.C. 1251(a)(2)(A)(ii), (A)(iii), (B), (C), (D)] (before redesignation under this subtitle), or

"(iv) is inadmissible under section 212(a)(3)(B) of such Act or deportable under section 241(a)(4)(B) of such Act (before redesignation under this subtitle), when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

"(B) RELEASE.—The Attorney General may release the alien only if the alien is an alien described in subparagraph (A)(ii) or (A)(iii) and—

"(i) the alien was lawfully admitted to the United States and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding, or

"(ii) the alien was not lawfully admitted to the United States, cannot be removed because the designated country of removal will not accept the alien, and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding."

Amendment by section 371(b)(5) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(12) of Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT

Pub. L. 105-141, Dec. 5, 1997, 111 Stat. 2647, provided that:

"SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT.

"(a) ESTABLISHMENT OF PROGRAM.—Not later than 6 months after the date of the enactment of this Act

[Dec. 5, 1997], and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

“(1) Aliens unlawfully present in the United States.
 “(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2), (4)] (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

“(b) DESCRIPTION OF PROGRAM.—The program authorized by subsection (a) shall include—

“(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and
 “(2) provision of funds sufficient to provide for—

“(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

“(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

“(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service’s intention to remove the alien from the United States.

“(c) SELECTION OF FACILITIES.—

“(1) IN GENERAL.—The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

“(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

“(B) Such government has submitted a request for such selection to the Attorney General.

“(C) The facility is located—

“(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

“(ii) in a city, town, or other analogous local political subdivision, that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a county).

“(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

“(2) NUMBER OF QUALIFYING SUBDIVISIONS.—For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

“(A) For fiscal year 1999, not less than 10 and not more than 25.

“(B) For fiscal year 2000, not less than 25 and not more than 50.

“(C) For fiscal year 2001, not more than 75.

“(D) For fiscal year 2002, not more than 100.

“(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

“(3) FACILITIES IN INTERIOR STATES.—For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

“(4) TREATMENT OF CERTAIN FACILITIES.—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of para-

graph (1)(D), shall be selected for participation in the program.

“SEC. 2. STUDY AND REPORT.

“Not later than 1 year after the date of the enactment of this Act [Dec. 5, 1997], the Attorney General shall complete a study, and submit a report to the Congress, concerning the logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through—

“(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

“(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.”

CRIMINAL ALIEN TRACKING CENTER

Section 130002 of Pub. L. 103-322, as amended by Pub. L. 104-132, title IV, §432, Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104-208, div. C, title III, §§308(g)(5)(B), 326, 327, Sept. 30, 1996, 110 Stat. 3009-623, 3009-630, provided that:

“(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 236(d) of the Immigration and Nationality Act [8 U.S.C. 1226(d)] operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to removal by reason of their conviction of aggravated felonies, subject to prosecution under section 275 of such Act [8 U.S.C. 1325], not lawfully present in the United States, or otherwise removable. Such system shall include providing for recording of fingerprint records of aliens who have been previously arrested and removed into appropriate automated fingerprint identification systems.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$3,400,000 for fiscal year 1996; and

“(2) \$5,000,000 for each of fiscal years 1997 through 2001.”

§ 1226a. Mandatory detention of suspected terrorists; habeas corpus; judicial review

(a) Detention of terrorist aliens

(1) Custody

The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) Release

Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) Certification

The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

(A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), 1227(a)(4)(A)(i), 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) Nondelegation

The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) Commencement of proceedings

The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

(6) Limitation on indefinite detention

An alien detained solely under paragraph (1) who has not been removed under section 1231(a)(1)(A) of this title, and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

(7) Review of certification

The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General's discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

(b) Habeas corpus and judicial review

(1) In general

Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6) of this section) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

(2) Application

(A) In general

Notwithstanding any other provision of law, including section 2241(a) of title 28, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with—

- (i) the Supreme Court;
- (ii) any justice of the Supreme Court;

(iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or

(iv) any district court otherwise having jurisdiction to entertain it.

(B) Application transfer

Section 2241(b) of title 28 shall apply to an application for a writ of habeas corpus described in subparagraph (A).

(3) Appeals

Notwithstanding any other provision of law, including section 2253 of title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

(4) Rule of decision

The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in habeas corpus proceedings described in paragraph (1).

(c) Statutory construction

The provisions of this section shall not be applicable to any other provision of this chapter. (June 27, 1952, ch. 477, title II, ch. 4, §236A, as added Pub. L. 107-56, title IV, §412(a), Oct. 26, 2001, 115 Stat. 350.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

REPORTS

Pub. L. 107-56, title IV, §412(c), Oct. 26, 2001, 115 Stat. 352, provided that: "Not later than 6 months after the date of the enactment of this Act [Oct. 26, 2001], and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

- "(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1226a(a)(3)], as added by subsection (a);
- "(2) the grounds for such certifications;
- "(3) the nationalities of the aliens so certified;
- "(4) the length of the detention for each alien so certified; and
- "(5) the number of aliens so certified who—
 - "(A) were granted any form of relief from removal;
 - "(B) were removed;
 - "(C) the Attorney General has determined are no longer aliens who may be so certified; or
 - "(D) were released from detention."

§ 1227. Deportable aliens**(a) Classes of deportable aliens**

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status**(A) Inadmissible aliens**

Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.

(C) Violated nonimmigrant status or condition of entry**(i) Nonimmigrant status violators**

Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry

Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence**(i) In general**

Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this title (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship waivers).

(E) Smuggling**(i) In general**

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try

to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

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

(iii) Waiver authorized

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Repealed. Pub. L. 104-208, div. C, title VI, § 671(d)(1)(C), Sept. 30, 1996, 110 Stat. 3009-723**(G) Marriage fraud**

An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 1182(a)(6)(C)(i) of this title) and to be in the United States in violation of this chapter (within the meaning of subparagraph (B)) if—

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inad-

missible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of section 758 of title 18 (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Failure to register as a sex offender

Any alien who is convicted under section 2250 of title 18 is deportable.

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been

granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18) in violation of any law is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title,

is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a

spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(F) Trafficking

Any alien described in section 1182(a)(2)(H) of this title is deportable.

(3) Failure to register and falsification of documents

(A) Change of address

An alien who has failed to comply with the provisions of section 1305 of this title is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) Failure to register or falsification of documents

Any alien who at any time has been convicted—

(i) under section 1306(c) of this title or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) Document fraud

(i) In general

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

(ii) Waiver authorized

The Attorney General may waive clause (i) in the case of an alien lawfully admit-

ted for permanent residence if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) Falsely claiming citizenship

(i) In general

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

(ii) Exception

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

(4) Security and related grounds

(A) In general

Any alien who has engaged, is engaged, or at any time after admission engages in—

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

(ii) any other criminal activity which endangers public safety or national security, or

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

is deportable.

(B) Terrorist activities

Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.

(C) Foreign policy

(i) In general

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

(ii) Exceptions

The exceptions described in clauses (ii) and (iii) of section 1182(a)(3)(C) of this title shall apply to deportability under clause

(i) in the same manner as they apply to inadmissibility under section 1182(a)(3)(C)(i) of this title.

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

Any alien described in clause (i), (ii), or (iii) of section 1182(a)(3)(E) of this title is deportable.

(E) Participated in the commission of severe violations of religious freedom

Any alien described in section 1182(a)(2)(G) of this title is deportable.

(F) 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 deportable.

(5) Public charge

Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

(6) Unlawful voters

(A) In general

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

(B) Exception

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

(7) Waiver for victims of domestic violence

(A) In general

The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

(i)¹ upon a determination that—

(I) the alien was acting in² self-defense;

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

(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime—

(aa) that did not result in serious bodily injury; and

(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

(B) Credible evidence considered

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

(b) Deportation of certain nonimmigrants

An alien, admitted as a nonimmigrant under the provisions of either section 1101(a)(15)(A)(i) or 1101(a)(15)(G)(i) of this title, and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a) of this section.

(c) Waiver of grounds for deportation

Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) of this section (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the alien was provided such special immigrant status.

(d) Administrative stay

(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 1101(a)(15) of this title filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 1231(c)(2) of this title until—

(A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or

(B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.

(2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws of the United States.

(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.

(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.

(June 27, 1952, ch. 477, title II, ch. 4, §237, formerly ch. 5, §241, 66 Stat. 204; July 18, 1956, ch.

¹ So in original. No cl. (ii) has been enacted.

² So in original. Probably should be "in".

629, title III, §301(b), (c), 70 Stat. 575; Pub. L. 86-648, §9, July 14, 1960, 74 Stat. 505; Pub. L. 87-301, §16, Sept. 26, 1961, 75 Stat. 655; Pub. L. 89-236, §11(e), Oct. 3, 1965, 79 Stat. 918; Pub. L. 94-571, §7(e), Oct. 20, 1976, 90 Stat. 2706; Pub. L. 95-549, title I, §103, Oct. 30, 1978, 92 Stat. 2065; Pub. L. 97-116, §8, Dec. 29, 1981, 95 Stat. 1616; Pub. L. 99-570, title I, §1751(b), Oct. 27, 1986, 100 Stat. 3207-47; Pub. L. 99-603, title III, §303(b), Nov. 6, 1986, 100 Stat. 3431; Pub. L. 99-639, §2(b), Nov. 10, 1986, 100 Stat. 3541; Pub. L. 99-653, §7(c), Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100-525, §2(n)(2), 9(m), Oct. 24, 1988, 102 Stat. 2613, 2620; Pub. L. 100-690, title VII, §§7344(a), 7348(a), Nov. 18, 1988, 102 Stat. 4470, 4473; Pub. L. 101-649, title I, §153(b), title V, §§505(a), 508(a), 544(b), title VI, §602(a), (b), Nov. 29, 1990, 104 Stat. 5006, 5050, 5051, 5061, 5077, 5081; Pub. L. 102-232, title III, §§302(d)(3), 307(h), (k), Dec. 12, 1991, 105 Stat. 1745, 1755, 1756; Pub. L. 103-322, title XIII, §130003(d), Sept. 13, 1994, 108 Stat. 2026; Pub. L. 103-416, title II, §§203(b), 219(g), Oct. 25, 1994, 108 Stat. 4311, 4317; Pub. L. 104-132, title IV, §§414(a), 435(a), Apr. 24, 1996, 110 Stat. 1270, 1274; renumbered ch. 4, §237, and amended Pub. L. 104-208, div. C, title I, §108(c), title III, §§301(d), 305(a)(2), 308(d)(2), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)-(N), (5), 344(b), 345(b), 347(b), 350(a), 351(b), title VI, §671(a)(4)(B), (d)(1)(C), Sept. 30, 1996, 110 Stat. 3009-558, 3009-579, 3009-598, 3009-617, 3009-619 to 3009-622, 3009-637 to 3009-640, 3009-721, 3009-723; Pub. L. 106-386, div. B, title V, §1505(b)(1), (c)(2), Oct. 28, 2000, 114 Stat. 1525, 1526; Pub. L. 106-395, title II, §201(c)(1), (2), Oct. 30, 2000, 114 Stat. 1634, 1635; Pub. L. 107-56, title IV, §411(b)(1), Oct. 26, 2001, 115 Stat. 348; Pub. L. 108-458, title V, §§5304(b), 5402, 5501(b), 5502(b), Dec. 17, 2004, 118 Stat. 3736, 3737, 3740, 3741; Pub. L. 109-13, div. B, title I, §105(a)(1), (b), May 11, 2005, 119 Stat. 309, 310; Pub. L. 109-248, title IV, §401, July 27, 2006, 120 Stat. 622; Pub. L. 109-271, §6(c), Aug. 12, 2006, 120 Stat. 763; Pub. L. 110-340, §2(c), Oct. 3, 2008, 122 Stat. 3736; Pub. L. 110-457, title II, §§204, 222(f)(2), Dec. 23, 2008, 122 Stat. 5060, 5071.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B), (G), (3)(D)(i), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

Section 301 of the Immigration Act of 1990, referred to in subsec. (a)(1)(E)(ii), is section 301 of Pub. L. 101-649, which is set out as a note under section 1255a of this title.

Section 112 of the Immigration Act of 1990, referred to in subsec. (a)(1)(E)(ii), is section 112 of Pub. L. 101-649, which is set out as a note under section 1153 of this title.

The Military Selective Service Act, referred to in subsec. (a)(2)(D)(iii), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

The Trading With the Enemy Act, referred to in subsec. (a)(2)(D)(iii), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix. For complete classification of this Act to the Code, see Tables.

The Alien Registration Act, 1940, referred to in subsec. (a)(3)(B)(i), is act June 28, 1940, ch. 439, 54 Stat. 670,

as amended. Section 36(a) of that act was classified to section 457(c) of this title and was repealed by section 403(a)(39) of act June 27, 1952.

The Foreign Agents Registration Act of 1938, referred to in subsec. (a)(3)(B)(ii), is act June 8, 1938, ch. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (§611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

CODIFICATION

Section was formerly classified to section 1251 of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS

A prior section 1227, acts June 27, 1952, ch. 477, title II, ch. 4, §237, 66 Stat. 201; Dec. 29, 1981, Pub. L. 97-116, §7, 95 Stat. 1615; Oct. 18, 1986, Pub. L. 99-500, §101(b) [title II, §206(b)(2)], as added Oct. 24, 1988, Pub. L. 100-525, §4(b)(4), 102 Stat. 2615; Oct. 24, 1988, Pub. L. 100-525, §9(f), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101-649, title V, §543(a)(2), 104 Stat. 5057; Dec. 12, 1991, Pub. L. 102-232, title III, §306(c)(4)(B), 105 Stat. 1752; Apr. 24, 1996, Pub. L. 104-132, title IV, §422(b), 110 Stat. 1272; Sept. 30, 1996, Pub. L. 104-208, div. C, title III, §308(d)(5), 110 Stat. 3009-619, related to immediate deportation of aliens excluded from admission or entering in violation of law, prior to repeal by Pub. L. 104-208, div. C, title III, §§305(a)(1), 309, Sept. 30, 1996, 110 Stat. 3009-597, 3009-625, effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996. See section 1231 of this title.

AMENDMENTS

2008—Subsec. (a)(2)(F). Pub. L. 110-457, §222(f)(2), added subpar. (F).

Subsec. (a)(4)(F). Pub. L. 110-340 added subpar. (F).

Subsec. (d). Pub. L. 110-457, §204, added subsec. (d).

2006—Subsec. (a)(1)(H)(ii). Pub. L. 109-271 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “is an alien who qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or clause (ii) or (iii) of section 1154(a)(1)(B) of this title.”

Subsec. (a)(2)(A)(v), (vi). Pub. L. 109-248 added cl. (v) and redesignated former cl. (v) as (vi).

2005—Subsec. (a)(4)(B). Pub. L. 109-13, §105(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity (as defined in section 1182(a)(3)(B)(iv) of this title) is deportable.”

Subsec. (a)(4)(E). Pub. L. 109-13, §105(b), repealed Pub. L. 108-458, §5402. See 2004 Amendment note below.

2004—Subsec. (a)(1)(B). Pub. L. 108-458, §5304(b), substituted “United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is” for “United States is”.

Subsec. (a)(4)(D). Pub. L. 108-458, §5501(b), substituted “Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing” for “Assisted in Nazi persecution or engaged in genocide” in heading and “clause (i), (ii), or (iii)” for “clause (i) or (ii)” in text.

Subsec. (a)(4)(E). Pub. L. 108-458, §5502(b), added subpar. (E) relating to participation in the commission of severe violations of religious freedom.

Pub. L. 108-458, §5402, which added subpar. (E) relating to recipient of military-type training, was repealed by Pub. L. 109-13, §105(b). See Effective Date of 2005 Amendment note below.

2001—Subsec. (a)(4)(B). Pub. L. 107-56 substituted “section 1182(a)(3)(B)(iv) of this title” for “section 1182(a)(3)(B)(iii) of this title”.

2000—Subsec. (a)(1)(H). Pub. L. 106-386, §1505(c)(2), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), and added cl. (ii).

Subsec. (a)(3)(D). Pub. L. 106-395, § 201(c)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any Federal or State law is deportable."

Subsec. (a)(6). Pub. L. 106-395, § 201(c)(1), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: "Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."

Subsec. (a)(7). Pub. L. 106-386, § 1505(b)(1), added par. (7).

1996—Subsec. (a). Pub. L. 104-208, § 308(e)(2)(C), substituted "removed" for "deported" in introductory provisions.

Pub. L. 104-208, § 301(d)(1), substituted "in and admitted to the United States" for "in the United States" in introductory provisions.

Subsec. (a)(1). Pub. L. 104-208, § 301(d)(2), substituted "Inadmissible" for "Excludable" in par. heading.

Subsec. (a)(1)(A). Pub. L. 104-208, §§ 301(d)(3), 308(d)(3)(A), amended subpar. (A) identically, substituting "inadmissible" for "excludable".

Pub. L. 104-208, § 301(d)(2), substituted "Inadmissible" for "Excludable" in subpar. heading.

Subsec. (a)(1)(B). Pub. L. 104-208, § 301(d)(4), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Any alien who entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or any other law of the United States is deportable."

Subsec. (a)(1)(E)(iii). Pub. L. 104-208, § 351(b), inserted "an individual who at the time of the offense was" after "aided only".

Subsec. (a)(1)(F). Pub. L. 104-208, § 671(d)(1)(C), struck out heading and text of subpar. (F). Text read as follows: "Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 1161 of this title who fails to meet the requirement of section 1161(d)(5)(A) of this title by the end of the applicable period is deportable."

Subsec. (a)(1)(G). Pub. L. 104-208, § 308(f)(1)(L), substituted "admission" for "entry" wherever appearing.

Subsec. (a)(1)(H). Pub. L. 104-208, § 308(f)(5), which directed amendment of subsec. (a)(1)(H)(ii) by striking "at entry", was executed by striking "at entry" after "grounds of inadmissibility" in concluding provisions of subpar. (H) to reflect the probable intent of Congress.

Pub. L. 104-208, § 308(f)(1)(M), substituted "admission as aliens" for "entry as aliens" in introductory provisions and "such admission" for "such entry" in cl. (ii).

Pub. L. 104-208, § 308(e)(1)(E), substituted "removal" for "deportation" wherever appearing.

Pub. L. 104-208, § 308(d)(2)(A), (3)(A), amended subpar. (H) identically, substituting "inadmissible" for "excludable" in introductory provisions.

Subsec. (a)(2)(A)(i)(I). Pub. L. 104-208, § 671(a)(4)(B), substituted "1255(j)" for "1255(i)".

Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry".

Subsec. (a)(2)(A)(i)(II). Pub. L. 104-132, § 435(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer."

Subsec. (a)(2)(A)(ii), (iii). Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry".

Subsec. (a)(2)(A)(iv). Pub. L. 104-208, § 108(c)(2), added cl. (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(2)(A)(v). Pub. L. 104-208, § 108(c)(3), substituted "(iii), and (iv)" for "and (iii)".

Pub. L. 104-208, § 108(c)(1), redesignated cl. (iv) as (v).

Subsec. (a)(2)(B). Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry" in cls. (i) and (ii).

Subsec. (a)(2)(C). Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry".

Subsec. (a)(2)(E). Pub. L. 104-208, § 350(a), added subpar. (E).

Subsec. (a)(2)(E)(i), (ii). Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry".

Subsec. (a)(3)(C). Pub. L. 104-208, § 345(b), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "Any alien who is the subject of a final order for violation of section 1324c of this title is deportable."

Subsec. (a)(3)(D). Pub. L. 104-208, § 344(b), added subpar. (D).

Subsec. (a)(4)(A), (B). Pub. L. 104-208, § 308(f)(1)(N), substituted "admission" for "entry".

Subsec. (a)(4)(C)(ii). Pub. L. 104-208, § 308(d)(2)(B), substituted "inadmissibility" for "excludability".

Subsec. (a)(6). Pub. L. 104-208, § 347(b), added par. (6).

Subsec. (c). Pub. L. 104-208, § 308(d)(2)(C), substituted "inadmissibility" for "exclusion".

Subsec. (d). Pub. L. 104-208, § 308(d)(2)(D), struck out subsec. (d) which read as follows: "Notwithstanding any other provision of this subchapter, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 1225 of this title is deemed for purposes of this chapter to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under part IV of this subchapter. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted."

Pub. L. 104-132, § 414(a), added subsec. (d).

1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103-322 inserted "or 10 years in the case of an alien provided lawful permanent resident status under section 1255(i) of this title" after "five years".

Subsec. (a)(2)(C). Pub. L. 103-416, § 203(b)(1), substituted "or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry," for "in violation of any law," and inserted "in violation of any law" after "title 18)".

Subsec. (a)(3)(B)(ii), (iii). Pub. L. 103-416, § 203(b)(2), inserted "an attempt or" before "a conspiracy".

Subsec. (c). Pub. L. 103-416, § 219(g), substituted "and (3)(A) of subsection (a)" for "or (3)(A) of subsection (a)".

1991—Subsec. (a). Pub. L. 102-232, § 307(h)(1), substituted "if the alien is within one or more of the following classes of deportable aliens" for "if the alien is deportable as being within one or more of the following classes of aliens".

Subsec. (a)(1)(D)(i). Pub. L. 102-232, § 307(h)(2), inserted "respective" after "terminated under such".

Subsec. (a)(1)(E)(i). Pub. L. 102-232, § 307(h)(3), inserted "any" after "at the time of" and after "within 5 years of the date of" in parenthetical provision.

Subsec. (a)(1)(E)(ii), (iii). Pub. L. 102-232, § 307(h)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(1)(G). Pub. L. 102-232, § 307(h)(5), substituted "section 1182(a)(6)(C)(i)" for "section 1182(a)(5)(C)(i)".

Subsec. (a)(1)(H). Pub. L. 102-232, § 307(h)(6), substituted "paragraph (4)(D)" for "paragraph (6) or (7)".

Subsec. (a)(2)(D). Pub. L. 102-232, § 307(h)(7), inserted "or attempt" after "conspiracy".

Subsec. (a)(3)(C). Pub. L. 102-232, § 307(h)(8), added subpar. (C).

Subsec. (a)(4)(A), (B). Pub. L. 102-232, § 307(h)(9), substituted "after entry engages" for "after entry has engaged".

Subsec. (a)(4)(C). Pub. L. 102-232, § 307(h)(10), substituted "excludability" for "excludability".

Subsec. (c). Pub. L. 102-232, § 307(k)(2), redesignated subsec. (h) as (c) and substituted "existed" for "exist".

Subsec. (d). Pub. L. 102-232, § 307(k)(1), struck out subsec. (d) which related to applicability of this section to aliens belonging to any of the classes enumerated in subsection (a) of this section.

Subsec. (h). Pub. L. 102-232, § 307(k)(2), redesignated subsec. (h) as (c).

Pub. L. 102-232, §302(d)(3), struck out comma after “(3)(A)”.

1990—Subsec. (a). Pub. L. 101-649, §602(a), amended subsec. (a) generally, consolidating 20 categories of excludable aliens into 5 broader classes.

Pub. L. 101-649, §544(b), added par. (21) which read as follows: “is the subject of a final order for violation of section 1324c of this title.”

Pub. L. 101-649, §508(a), substituted “conspiracy or attempt” for “conspiracy” in par. (11).

Subsec. (b). Pub. L. 101-649, §602(b), redesignated subsec. (e) as (b), substituted “paragraph (4) of subsection (a) of this section” for “subsection (a)(6) or (7) of this section” and struck out former subsec. (b) which related to nonapplicability of subsec. (a)(4) of this section.

Pub. L. 101-649, §505(a), struck out “(1)” after “crimes shall not apply” and “, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter” at end of first sentence, and inserted “or who has been convicted of an aggravated felony” after “subsection (a)(11) of this section” in second sentence.

Subsec. (c). Pub. L. 101-649, §602(b)(1), struck out subsec. (c) which related to fraudulent entry.

Subsec. (e). Pub. L. 101-649, §602(b)(2)(B), redesignated subsec. (e) as (b).

Subsecs. (f), (g). Pub. L. 101-649, §602(b)(1), struck out subsecs. (f) and (g) which related to waiver of deportation in specified cases and hardship waivers, respectively.

Subsec. (h). Pub. L. 101-649, §153(b)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “Paragraphs (1), (2), (5), (9), or (12) of subsection (a) of this section (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that exist before the date the alien was provided such special immigrant status.”

Pub. L. 101-649, §153(b)(1), added subsec. (h).

1988—Subsec. (a)(4). Pub. L. 100-690, §7344(a), inserted cl. (B).

Subsec. (a)(14). Pub. L. 100-690 inserted “any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, or any revolver or” after “law”.

Subsec. (a)(17). Pub. L. 100-525, §9(m), substituted “amendment, thereof, known as the Trading With the Enemy Act” for “amendment thereof; the Trading With the Enemy Act”.

Subsec. (a)(20). Pub. L. 100-525, §2(n)(2), substituted “an alien lawfully admitted” for “an alien who becomes lawfully admitted”.

1986—Subsec. (a)(9). Pub. L. 99-639, §2(b)(1), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(10). Pub. L. 99-653 repealed par. (10). Prior to repeal, par. (10) read as follows: “entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 1228(a) of this title and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere);”.

Subsec. (a)(11). Pub. L. 99-570 substituted “any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)” for “any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture,

production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipeaine or any addiction-forming or addiction-sustaining opiate”.

Subsec. (a)(20). Pub. L. 99-603 added par. (20).

Subsec. (g). Pub. L. 99-639, §2(b)(2), added subsec. (g).

1981—Subsec. (f). Pub. L. 97-116 designated existing provision as par. (1)(A), substituted provision authorizing discretionary waiver of deportation based on visa fraud or misrepresentation in the case of an alien, other than an alien described in subsec. (a)(19) of this section, who is the spouse, parent, or child of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence and who was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds specified in section 1182(a)(14), (20), and (21) of this title which were a direct result of that fraud or misrepresentation, with relief available to those who have made innocent, as well as fraudulent, misrepresentations, for provision requiring mandatory waiver of deportation based on visa fraud or misrepresentation at the time of entry in the case of an alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence who is otherwise admissible, and added pars. (1)(B) and (2).

1978—Subsec. (a)(19). Pub. L. 95-549 added par. (19).

1976—Subsec. (a)(10). Pub. L. 94-571 substituted “(other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere)” for “(other than an alien who is a native-born citizen of any of the countries enumerated in section 1101(a)(27)(A) of this title and an alien described in section 1101(a)(27)(B) of this title)”.

1965—Subsec. (a)(10). Pub. L. 89-236 substituted “section 1101(a)(27)(A) of this title” for “section 1101(a)(27)(C) of this title”.

1961—Subsec. (f). Pub. L. 87-301 added subsec. (f).

1960—Subsec. (a)(11). Pub. L. 86-648 inserted “or marihuana” after “narcotic drugs”.

1956—Subsec. (a)(11). Act July 18, 1956, §301(b), included conspiracy to violate any narcotic law, and the illicit possession of narcotics, as additional grounds for deportation.

Subsec. (b). Act July 18, 1956, §301(c), inserted at end “The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a)(11) of this section.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-340 applicable to offenses committed before, on, or after Oct. 3, 2008, see section 3(c) of Pub. L. 111-122, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-13, div. B, title I, §105(a)(2), May 11, 2005, 119 Stat. 309, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005], and the amendment, and section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)), as amended by such paragraph, shall apply to—

“(A) removal proceedings instituted before, on, or after the date of the enactment of this division [May 11, 2005]; and

“(B) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.”

Pub. L. 109-13, div. B, title I, §105(b), May 11, 2005, 119 Stat. 310, provided that: “Effective as of the date of the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) [Dec. 17, 2004], section 5402 of such Act [amending this section] is repealed, and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 5304(b) of Pub. L. 108-458 effective Dec. 17, 2004, and applicable to revocations under sections 1155 and 1201(i) of this title made before, on, or after such date, see section 5304(d) of Pub. L. 108-458, set out as a note under section 1155 of this title.

Amendment by section 5501(b) of Pub. L. 108-458 applicable to offenses committed before, on, or after Dec. 17, 2004, see section 5501(c) of Pub. L. 108-458, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107-56, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-395, title II, §201(c)(3), Oct. 30, 2000, 114 Stat. 1635, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-638) and shall apply to voting occurring before, on, or after September 30, 1996. The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-637) and shall apply to representations made on or after September 30, 1996. Such amendments shall apply to individuals in proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] on or after September 30, 1996.”

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by sections 301(d), 305(a)(2), and 308(d)(2)(A)–(C), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)–(N), (5) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 308(d)(2)(D) of div. C of Pub. L. 104-208 provided that the amendment made by that section is effective Sept. 30, 1996.

Amendment by section 344(b) of Pub. L. 104-208 applicable to representations made on or after Sept. 30, 1996, see section 344(c) of Pub. L. 104-208, set out as a note under section 1182 of this title.

Amendment by section 347(b) of Pub. L. 104-208 applicable to voting occurring before, on, or after Sept. 30, 1996, see section 347(c) of Pub. L. 104-208, set out as a note under section 1182 of this title.

Section 350(b) of div. C of Pub. L. 104-208 provided that: “The amendment made by subsection (a) [amending this section] shall apply to convictions, or violations of court orders, occurring after the date of the enactment of this Act [Sept. 30, 1996].”

Amendment by section 351(b) of Pub. L. 104-208 applicable to applications for waivers filed before, on, or after Sept. 30, 1996, but not applicable to such an appli-

cation for which a final determination has been made as of Sept. 30, 1996, see section 351(c) of Pub. L. 104-208, set out as a note under section 1182 of this title.

Amendment by section 671(a)(4)(B) of Pub. L. 104-208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, see section 671(a)(7) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 414(b) of Pub. L. 104-132 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Apr. 24, 1996].”

Section 435(b) of Pub. L. 104-132 provided that: “The amendment made by subsection (a) [amending this section] shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act [Apr. 24, 1996].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 203(b) of Pub. L. 103-416 applicable to convictions occurring before, on, or after Oct. 25, 1994, see section 203(c) of Pub. L. 103-416, set out as an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

Amendment by section 219(g) of Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 302(d)(3), 307(h) of Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

Section 307(k) of Pub. L. 102-232 provided that the amendment made by that section is effective as if included in section 602(b) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 153(b)(1) of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Section 153(b)(2) of Pub. L. 101-649 provided that the amendment of the subsec. (h) added by section 153(b)(1) of Pub. L. 101-649 is effective on the date the amendments by section 602 of Pub. L. 101-649 become effective. See section 602(d) of Pub. L. 101-649, set out below.

Section 505(b) of Pub. L. 101-649 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and shall apply to convictions entered before, on, or after such date.”

Section 508(b) of Pub. L. 101-649 provided that: “The amendment made by subsection (a) [amending this section] shall apply to convictions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].”

Section 544(d), formerly (c), of Pub. L. 101-649, as redesignated by Pub. L. 102-232, title III, §306(c)(5)(B), Dec. 12, 1991, 105 Stat. 1752, provided that: “The amendments made by this section [enacting section 1324c of this title and amending this section] shall apply to persons or entities that have committed violations on or after the date of the enactment of this Act [Nov. 29, 1990].”

Section 602(d) of Pub. L. 101-649 provided that: “The amendments made by this section, and by section 603(b) of this Act [amending this section, sections 1161, 1252, 1253, and 1254 of this title, and section 402 of Title 42, The Public Health and Welfare], shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991.”

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 7344(b) of Pub. L. 100-690 provided that: “The amendments made by subsection (a) [amending this

section] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.’’

Section 7348(b) of Pub. L. 100-690 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to any alien convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of possessing any firearm or destructive device referred to in such subsection.’’

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

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99-653, set out as a note under section 1101 of this title.

Amendment by Pub. L. 99-570 applicable to convictions occurring before, on, or after Oct. 27, 1986, see section 1751(c) of Pub. L. 99-570, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956.

SAVINGS PROVISION

Section 602(c) of Pub. L. 101-649 provided that: ‘‘Notwithstanding the amendments made by this section [amending this section], any alien who was deportable because of a conviction (before the date of the enactment of this Act [Nov. 29, 1990]) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) [now 237] of the Immigration and Nationality Act [8 U.S.C. 1227], as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d) [set out as a note above], the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which an alien is described in such subsection, occurred before the date of the enactment of this Act.’’

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

REPORT ON CRIMINAL ALIENS

Section 510 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, §306(a)(8), (9), Dec. 12, 1991, 105 Stat. 1751, provided that the Attorney General was to submit to appropriate Committees of Congress, by not later than Dec. 1, 1991, a report describing efforts of Immi-

gration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States and including a criminal alien census and removal plan.

§ 1228. Expedited removal of aliens convicted of committing aggravated felonies

(a) Removal of criminal aliens

(1) In general

The Attorney General shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title. Such proceedings shall be conducted in conformity with section 1229a of this title (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the Service and in a manner which assures expeditious removal following the end of the alien’s incarceration for the underlying sentence. Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(2) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1226(c) of this title, the Attorney General shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the alien’s access to counsel and right to counsel under section 1362 of this title are not impaired.

(3) Expedited proceedings

(A) Notwithstanding any other provision of law, the Attorney General shall provide for the initiation and, to the extent possible, the completion of removal proceedings, and any administrative appeals thereof, in the case of any alien convicted of an aggravated felony before the alien’s release from incarceration for the underlying aggravated felony.

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the removal of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

(4) Review

(A) The Attorney General shall review and evaluate removal proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to

such Committees concerning the extent to which removal proceedings conducted under this section may adversely affect the ability of such aliens to contest removal effectively.

(b) Removal of aliens who are not permanent residents

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1227(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 1229a of this title.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or

(B) had permanent resident status on a conditional basis (as described in section 1186a of this title) at the time that proceedings under this section commenced.

(3) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 1252 of this title.

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose;

(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

(D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;

(E) a record is maintained for judicial review; and

(F) the final order of removal is not adjudicated by the same person who issues the charges.

(5) No alien described in this section shall be eligible for any relief from removal that the Attorney General may grant in the Attorney General's discretion.

(c)¹ Presumption of deportability

An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

(c)¹ Judicial removal

(1) Authority

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of

removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

(2) Procedure

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial removal.

(B) Notwithstanding section 1252b² of this title, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 1227(a)(2)(A) of this title.

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal under this chapter, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 1229a of this title.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

(iv) The court may order the alien removed if the Attorney General demonstrates that the alien is deportable under this chapter.

(3) Notice, appeal, and execution of judicial order of removal

(A)(i) A judicial order of removal or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 1252 of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 1252(b)(1) of this title, or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

¹ So in original. Two subses. (c) have been enacted.

² See References in Text note below.

(B) As soon as is practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order of removal, which shall designate the defendant's country of choice for removal and any alternate country pursuant to section 1253(a)² of this title.

(4) Denial of judicial order

Denial of a request for a judicial order of removal shall not preclude the Attorney General from initiating removal proceedings pursuant to section 1229a of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1227(a) of this title.

(5) Stipulated judicial order of removal

The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this chapter, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation.

(June 27, 1952, ch. 477, title II, ch. 4, § 238, formerly ch. 5, § 242A, as added Pub. L. 100-690, title VII, § 7347(a), Nov. 18, 1988, 102 Stat. 4471; amended Pub. L. 101-649, title V, § 506(a), Nov. 29, 1990, 104 Stat. 5050; Pub. L. 102-232, title III, § 309(b)(10), Dec. 12, 1991, 105 Stat. 1759; Pub. L. 103-322, title XIII, § 130004(a), (c), Sept. 13, 1994, 108 Stat. 2026, 2027; Pub. L. 103-416, title II, § 223(a), 224(a), Oct. 25, 1994, 108 Stat. 4322; Pub. L. 104-132, title IV, §§ 440(g), 442(a), (c), Apr. 24, 1996, 110 Stat. 1278-1280; renumbered ch. 4, § 238, and amended Pub. L. 104-208, div. C, title III, §§ 304(c)(1), 306(d), 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H), 374(a), title VI, § 671(b)(13), (c)(5), (6), Sept. 30, 1996, 110 Stat. 3009-597, 3009-612, 3009-615, 3009-616, 3009-619, 3009-620, 3009-622, 3009-623, 3009-625, 3009-647, 3009-722, 3009-723.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a)(4)(B), see Effective Date note below.

This chapter, referred to in subsec. (c)(1), (2)(C), (D)(iv), (5), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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.

Section 1252b of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 104-208, div. C, title III, § 308(b)(6), Sept. 30, 1996, 110 Stat. 3009-615.

Section 1253 of this title, referred to in subsec. (c)(3)(B), was amended generally by Pub. L. 104-208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009-612, and, as so amended, subsec. (a) no longer contains provisions relating to alternate countries. Provisions similar to those contained in former subsec. (a) of section 1253 are now contained in section 1231(b) of this title.

Federal Rule of Criminal Procedure 11, referred to in subsec. (c)(5), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was formerly classified to section 1252a of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS

A prior section 1228, act June 27, 1952, ch. 477, title II, ch. 4, § 238, 66 Stat. 202, as amended, which related to entry through or from foreign contiguous territory and adjacent islands, was renumbered section 233 of act June 27, 1952, by Pub. L. 104-208, div. C, title III, § 308(b)(4), Sept. 30, 1996, 110 Stat. 3009-615, and was transferred to section 1223 of this title.

AMENDMENTS

1996—Pub. L. 104-208, § 308(b)(5), substituted "removal" for "deportation" in section catchline.

Subsec. (a). Pub. L. 104-208, § 308(e)(10), substituted "Removal" for "Deportation" in heading.

Subsec. (a)(1). Pub. L. 104-208, § 308(g)(1), substituted "1227(a)(2)(A)(iii)" for "1251(a)(2)(A)(iii)".

Pub. L. 104-208, § 308(e)(1)(F), substituted "removal" for "deportation" in two places.

Pub. L. 104-208, § 308(c)(4)(A), inserted at end "Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."

Pub. L. 104-208, § 308(c)(1)(A), substituted "section 1229a" for "section 1252".

Pub. L. 104-132, § 440(g)(1)(B), struck out "where warranted," after "assures expeditious deportation".

Pub. L. 104-132, § 440(g)(1)(A), as amended by Pub. L. 104-208, §§ 306(d), 308(g)(10)(H), 671(c)(5), substituted "any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title" for "aggravated felonies (as defined in section 1101(a)(43) of this title)".

Subsec. (a)(2). Pub. L. 104-208, § 308(c)(1)(B), substituted "section 1226(c)" for "section 1252(a)(2)".

Pub. L. 104-132, § 440(g)(2), which directed substitution of "any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1251(a)(2)(A)(ii) of this title for which both predicate offenses are covered by section 1251(a)(2)(A)(i) of this title." for "aggravated felony" and all that follows through "before any scheduled hearings.", was repealed by Pub. L. 104-208, § 671(c)(6).

Subsec. (a)(3), (4). Pub. L. 104-208, § 308(e)(1)(F), substituted "removal" for "deportation" wherever appearing.

Subsec. (b). Pub. L. 104-208, § 308(e)(10), substituted "Removal" for "Deportation" in heading.

Subsec. (b)(1). Pub. L. 104-208, § 308(g)(5)(C), substituted "section 1229a" for "section 1252(b)".

Pub. L. 104-208, § 308(e)(1)(F), substituted "removal" for "deportation".

Pub. L. 104-208, § 308(c)(1)(C), substituted "section 1227(a)(2)(A)(iii)" for "section 1251(a)(2)(A)(iii)".

Subsec. (b)(2)(A). Pub. L. 104-132, § 442(a)(1)(A), substituted "or" for "and" at end.

Subsec. (b)(2)(B). Pub. L. 104-132, § 442(a)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "is not eligible for any relief from deportation under this chapter."

Subsec. (b)(3). Pub. L. 104-208, § 308(g)(2)(A), substituted "section 1252" for "section 1105a".

Pub. L. 104-132, § 442(a)(2), substituted "14 calendar days" for "30 calendar days".

Subsec. (b)(4)(B). Pub. L. 104-132, § 442(a)(3), substituted "proceedings" for "procedings".

Subsec. (b)(4)(D). Pub. L. 104-208, § 304(c)(1)(A), (B), redesignated subpar. (E) as (D) and amended it generally,

and struck out former subpar. (D). Prior to amendments, subpars. (D) and (E) read as follows:

“(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

“(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;”.

Pub. L. 104-132, § 442(a)(4)(B), added subpar. (D). Former subpar. (D) redesignated (F).

Subsec. (b)(4)(E). Pub. L. 104-208, § 304(c)(1)(C), redesignated subpar. (F) as (E). Former subpar. (E) amended generally and redesignated (D).

Pub. L. 104-132, § 442(a)(4)(B), added subpar. (E). Former subpar. (E) redesignated (G).

Subsec. (b)(4)(F). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Pub. L. 104-208, § 304(c)(1)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 104-132, § 442(a)(4)(A), redesignated subpar. (D) as (F).

Subsec. (b)(4)(G). Pub. L. 104-208, § 304(c)(1)(C), redesignated subpar. (G) as (F).

Pub. L. 104-132, § 442(a)(4)(A), redesignated subpar. (E) as (G).

Subsec. (b)(5). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Pub. L. 104-132, § 442(a)(5), added par. (5).

Subsec. (c). Pub. L. 104-208, § 671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Pub. L. 104-208, § 308(e)(10), substituted “removal” for “deportation” in heading.

Pub. L. 104-132, § 442(c), added subsec. (c), relating to presumption of deportability.

Subsec. (c)(1). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(A). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(B). Pub. L. 104-208, § 308(g)(1), substituted “section 1227(a)(2)(A)” for “section 1251(a)(2)(A)”.

Subsec. (c)(2)(C). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(D)(ii). Pub. L. 104-208, § 308(g)(5)(D), substituted “section 1229a” for “section 1252(b)”.

Subsec. (c)(2)(D)(iv). Pub. L. 104-208, § 308(e)(2)(D), substituted “removed” for “deported”.

Subsec. (c)(3). Pub. L. 104-208, § 308(e)(10), substituted “removal” for “deportation” in heading.

Subsec. (c)(3)(A)(i). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(3)(A)(ii). Pub. L. 104-208, § 308(g)(2)(A), substituted “section 1252” for “section 1105a”.

Subsec. (c)(3)(A)(iii). Pub. L. 104-208, § 308(g)(2)(C), substituted “section 1252(b)(1)” for “section 1105a(a)(1)”.

Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (c)(3)(B). Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation” wherever appearing.

Subsec. (c)(4). Pub. L. 104-208, § 308(g)(5)(A)(ii), substituted “section 1229a” for “section 1252”.

Pub. L. 104-208, § 308(g)(1), substituted “section 1227(a)” for “section 1251(a)”.

Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (c)(5). Pub. L. 104-208, § 308(e)(10), substituted “removal” for “deportation” in heading.

Pub. L. 104-208, § 308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (d). Pub. L. 104-208, § 671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Subsec. (d)(1). Pub. L. 104-208, § 374(a)(1), substituted “who is deportable” for “whose criminal conviction causes such alien to be deportable under section 1251(a)(2)(A) of this title”.

Subsec. (d)(4). Pub. L. 104-208, § 374(a)(2), struck out “without a decision on the merits” after “Denial”.

Subsec. (d)(5). Pub. L. 104-208, § 374(a)(3), added par. (5).

1994—Pub. L. 103-322, § 130004(c)(1), struck out “procedures for” after “Expedited” in section catchline.

Subsec. (a)(1). Pub. L. 103-322, § 130004(c)(2), substituted subsec. heading for one which read “In general”, redesignated existing subsec. (a) as par. (1) of subsec. (a), and inserted heading.

Subsec. (a)(2). Pub. L. 103-322, § 130004(c)(3), redesignated subsec. (b) as par. (2) of subsec. (a).

Subsec. (a)(3). Pub. L. 103-322, § 130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a), and redesignated pars. (1) and (2) of former subsec. (d) as subpars. (A) and (B), respectively, of subsec. (a)(3).

Subsec. (a)(4). Pub. L. 103-322, § 130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a), redesignated par. (1) of former subsec. (e) as subpar. (A) of subsec. (a)(4) and struck out at end “Within 12 months after the effective date of this section, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate concerning the effectiveness of such deportation proceedings in facilitating the deportation of aliens convicted of aggravated felonies.”, and redesignated par. (2) of former subsec. (e) as subpar. (B) of subsec. (a)(4).

Subsec. (b). Pub. L. 103-322, § 130004(a), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (b)(4)(D), (E). Pub. L. 103-416, § 223(a), struck out “the determination of deportability is supported by clear, convincing, and unequivocal evidence and” before “a record is” in subpar. (D) and substituted “adjudicated” for “entered” in subpar. (E).

Subsec. (c). Pub. L. 103-322, § 130004(c)(4), struck out heading and text of subsec. (c). Prior to amendment, text read as follows: “An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.”

Subsec. (d). Pub. L. 103-416, § 224(a), added subsec. (d). Pub. L. 103-322, § 130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a).

Subsec. (e). Pub. L. 103-322, § 130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a).

1991—Subsec. (a). Pub. L. 102-232 inserted closing parenthesis before period at end of first sentence.

1990—Subsec. (d)(2). Pub. L. 101-649 struck out before period at end “, unless the chief prosecutor or the judge in whose jurisdiction conviction occurred submits a written request to the Attorney General that such alien be so deported”.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 304(c)(2) of div. C of Pub. L. 104-208 provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 442(a) of Public Law 104-132.”

Amendment by section 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Section 306(d) of div. C of Pub. L. 104-208 provided that the amendment made by that section is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132.

Section 374(c) of div. C of Pub. L. 104-208 provided that: “The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of section 224(a) of the Immigration and Nationality Technical Corrections Act of 1994 [Pub. L. 103-416].”

Amendment by section 671(b)(13) of Pub. L. 104-208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, see section 671(b)(14) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 671(c)(5), (6) of Pub. L. 104-208 effective as if included in the enactment of subtitle A

of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 671(c)(7) of Pub. L. 104-208, set out as a note under section 1189 of this title.

Section 442(d) of Pub. L. 104-132 provided that: “The amendments made by this section [amending this section and section 1105a of this title] shall become effective no later than 60 days after the publication by the Attorney General of implementing regulations that shall be published on or before January 1, 1997.”

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 224(a) of Pub. L. 103-416 applicable to all aliens whose adjudication of guilt or guilty plea is entered in the record after Oct. 25, 1994, see section 224(c) of Pub. L. 103-416, set out as a note under section 1252 of this title.

Section 130004(d) of Pub. L. 103-322 provided that: “The amendments made by this section [amending this section and section 1105a of this title] shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act [Sept. 13, 1994].”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 506(b) of Pub. L. 101-649 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE

Section 7347(c) of Pub. L. 100-690 provided that: “The amendments made by subsections (a) and (b) [enacting this section and amending section 1105a of this title] shall apply in the case of any alien convicted of an aggravated felony on or after the date of the enactment of this Act [Nov. 18, 1988].”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

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

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

EXPANDED SPECIAL REMOVAL PROCEEDINGS

Section 130007 of Pub. L. 103-322, as amended by Pub. L. 104-208, div. C, title III, § 308(g)(5)(F), (10)(F), title VI, § 671(a)(6), Sept. 30, 1996, 110 Stat. 3009-623, 3009-625, 3009-721, provided that:

“(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section[s] 238(a)(3) and 239(d) of the Immigration and Nationality Act [8 U.S.C. 1228(a)(3), 1229(d)] to ensure that such aliens are immediately deportable upon their release from incarceration.

“(b) DETENTION AND REMOVAL OF CRIMINAL ALIENS.—Subject to the availability of appropriations, the Attorney General may—

“(1) construct or contract for the construction of 2 Immigration and Naturalization Service Processing Centers to detain criminal aliens; and

“(2) provide for the detention and removal of such aliens.

“(c) REPORT.—By September 30, 1996, and September 30, 1998 the Attorney General shall report to the Congress on the programs referred to in subsections (a) and (b). The report shall include an evaluation of the pro-

grams, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$55,000,000 for fiscal year 1995;

“(2) \$54,000,000 for fiscal year 1996;

“(3) \$49,000,000 for fiscal year 1997; and

“(4) \$2,000,000 for fiscal year 1998.”

§ 1229. Initiation of removal proceedings

(a) Notice to appear

(1) In general

In removal proceedings under section 1229a of this title, written notice (in this section referred to as a “notice to appear”) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) of this section and (ii) a current list of counsel prepared under subsection (b)(2) of this section.

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien’s address or telephone number.

(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings

(A) In general

In removal proceedings under section 1229a of this title, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying—

(i) the new time or place of the proceedings, and

(ii) the consequences under section 1229a(b)(5) of this title of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception

In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files

The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel

(1) In general

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 1229a of this title, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 1229a of this title. Such lists shall be provided under subsection (a)(1)(E) of this section and otherwise made generally available.

(3) Rule of construction

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 1229a of this title if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F) of this section.

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Certification of compliance with restrictions on disclosure

(1) In general

In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 1367 of this title have been complied with.

(2) Locations

The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 1101(a)(15) of this title.

(June 27, 1952, ch. 477, title II, ch. 4, § 239, as added Pub. L. 104-208, div. C, title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009-587; amended Pub. L. 109-162, title VIII, § 825(c)(1), Jan. 5, 2006, 119 Stat. 3065; Pub. L. 109-271, § 6(d), Aug. 12, 2006, 120 Stat. 763.)

PRIOR PROVISIONS

A prior section 1229, act June 27, 1952, ch. 477, title II, ch. 4, § 239, 66 Stat. 203, as amended, which related to designation of ports of entry for aliens arriving by aircraft, was renumbered section 234 of act June 27, 1952, by Pub. L. 104-208, div. C, title III, § 304(a)(1), Sept. 30, 1996, 110 Stat. 3009-587, and was transferred to section 1224 of this title.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109-162 added subsec. (e).
Subsec. (e)(2)(B). Pub. L. 109-271 substituted “(U)” for “(V)”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-162, title VIII, § 825(c)(2), Jan. 5, 2006, 119 Stat. 3065, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 30 days after the date of the enactment of this Act [Jan. 5, 2006] and shall apply to apprehensions occurring on or after such date.”

EFFECTIVE DATE

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1229a. Removal proceedings

(a) Proceeding

(1) In general

An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) Charges

An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a)

of this title or any applicable ground of deportability under section 1227(a) of this title.

(3) Exclusive procedures

Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 1228 of this title.

(b) Conduct of proceeding

(1) Authority of immigration judge

The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this chapter.

(2) Form of proceeding

(A) In general

The proceeding may take place—

- (i) in person,
- (ii) where agreed to by the parties, in the absence of the alien,
- (iii) through video conference, or
- (iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases

An evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.

(3) Presence of alien

If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

(4) Alien's rights in proceeding

In proceedings under this section, under regulations of the Attorney General—

(A) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings,

(B) the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this chapter, and

(C) a complete record shall be kept of all testimony and evidence produced at the proceeding.

(5) Consequences of failure to appear

(A) In general

Any alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of this title has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2) of this section). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 1229(a)(1)(F) of this title.

(B) No notice if failure to provide address information

No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title.

(C) Rescission of order

Such an order may be rescinded only—

(i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1) of this section), or

(ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a) of this title or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge.

(D) Effect on judicial review

Any petition for review under section 1252 of this title of an order entered in absentia under this paragraph shall (except in cases described in section 1252(b)(5) of this title) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable.

(E) Additional application to certain aliens in contiguous territory

The preceding provisions of this paragraph shall apply to all aliens placed in proceedings under this section, including any alien who remains in a contiguous foreign territory pursuant to section 1225(b)(2)(C) of this title.

(6) Treatment of frivolous behavior

The Attorney General shall, by regulation—
(A) define in a proceeding before an immigration judge or before an appellate adminis-

trative body under this subchapter, frivolous behavior for which attorneys may be sanctioned,

(B) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed, and

(C) impose appropriate sanctions (which may include suspension and disbarment) in the case of frivolous behavior.

Nothing in this paragraph shall be construed as limiting the authority of the Attorney General to take actions with respect to inappropriate behavior.

(7) Limitation on discretionary relief for failure to appear

Any alien against whom a final order of removal is entered in absentia under this subsection and who, at the time of the notice described in paragraph (1) or (2) of section 1229(a) of this title, was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (e)(1) of this section) to attend a proceeding under this section, shall not be eligible for relief under section 1229b, 1229c, 1255, 1258, or 1259 of this title for a period of 10 years after the date of the entry of the final order of removal.

(c) Decision and burden of proof

(1) Decision

(A) In general

At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.

(B) Certain medical decisions

If a medical officer or civil surgeon or board of medical officers has certified under section 1222(b) of this title that an alien has a disease, illness, or addiction which would make the alien inadmissible under paragraph (1) of section 1182(a) of this title, the decision of the immigration judge shall be based solely upon such certification.

(2) Burden on alien

In the proceeding the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or

(B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.

In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents, not considered by the Attorney General to be confidential, pertaining to the alien's admission or presence in the United States.

(3) Burden on service in cases of deportable aliens

(A) In general

In the proceeding the Service has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

(B) Proof of convictions

In any proceeding under this chapter, any of the following documents or records (or a certified copy of such an official document or record) shall constitute proof of a criminal conviction:

(i) An official record of judgment and conviction.

(ii) An official record of plea, verdict, and sentence.

(iii) A docket entry from court records that indicates the existence of the conviction.

(iv) Official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.

(v) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a State official associated with the State's repository of criminal justice records, that indicates the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence.

(vi) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(vii) Any document or record attesting to the conviction that is maintained by an official of a State or Federal penal institution, which is the basis for that institution's authority to assume custody of the individual named in the record.

(C) Electronic records

In any proceeding under this chapter, any record of conviction or abstract that has been submitted by electronic means to the Service from a State or court shall be admissible as evidence to prove a criminal conviction if it is—

(i) certified by a State official associated with the State's repository of criminal justice records as an official record from its repository or by a court official from the court in which the conviction was entered as an official record from its repository, and

(ii) certified in writing by a Service official as having been received electronically from the State's record repository or the court's record repository.

A certification under clause (i) may be by means of a computer-generated signature and statement of authenticity.

(4) Applications for relief from removal**(A) In general**

An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

- (i) satisfies the applicable eligibility requirements; and
- (ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

(B) Sustaining burden

The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant's application for relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.

(C) Credibility determination

Considering the totality of the circumstances, and all relevant factors, the immigration judge may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(5) Notice

If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the

order of removal, including civil and criminal penalties.

(6) Motions to reconsider**(A) In general**

The alien may file one motion to reconsider a decision that the alien is removable from the United States.

(B) Deadline

The motion must be filed within 30 days of the date of entry of a final administrative order of removal.

(C) Contents

The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority.

(7) Motions to reopen**(A) In general**

An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).

(B) Contents

The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C) Deadline**(i) In general**

Except as provided in this subparagraph, the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal.

(ii) Asylum

There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections¹ 1158 or 1231(b)(3) of this title and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii) Failure to appear

The filing of a motion to reopen an order entered pursuant to subsection (b)(5) of this section is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) Special rule for battered spouses, children, and parents

Any limitation under this section on the deadlines for filing such motions shall not apply—

- (I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 1154(a)(1)(A) of this title, clause (ii) or (iii) of section 1154(a)(1)(B) of this title,¹ section 1229b(b) of this title, or section 1254(a)(3) of this title (as in effect on March 31, 1997);

¹ So in original.

(II) if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen;

(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; and

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the removal of a qualified alien (as defined in section 1641(c)(1)(B) of this title² pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

(d) Stipulated removal

The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien's representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.

(e) Definitions

In this section and section 1229b of this title:

(1) Exceptional circumstances

The term "exceptional circumstances" refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

(2) Removable

The term "removable" means—

(A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 1182 of this title, or

(B) in the case of an alien admitted to the United States, that the alien is deportable under section 1227 of this title.

(June 27, 1952, ch. 477, title II, ch. 4, §240, as added Pub. L. 104-208, div. C, title III, §304(a)(3), Sept. 30, 1996, 110 Stat. 3009-589; amended Pub. L. 106-386, div. B, title V, §1506(c)(1)(A), Oct. 28, 2000, 114 Stat. 1528; Pub. L. 109-13, div. B, title I, §101(d), May 11, 2005, 119 Stat. 304; Pub. L. 109-162, title VIII, §§813(a)(1), 825(a), Jan. 5, 2006, 119 Stat. 3057, 3063.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(1), (4)(B), and (c)(3)(B), (C), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known

²So in original. A closing parenthesis probably should appear.

as the Immigration and Nationality Act, 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.

Section 1254 of this title, referred to in subsec. (c)(7)(C)(iv)(I), was repealed by Pub. L. 104-208, div. C, title III, §308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615.

PRIOR PROVISIONS

A prior section 240 of act June 27, 1952, was renumbered section 240C, and is classified to section 1230 of this title.

AMENDMENTS

2006—Subsec. (c)(7)(A). Pub. L. 109-162, §825(a)(1), inserted before period at end " , except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)".

Subsec. (c)(7)(C)(iv). Pub. L. 109-162, §825(a)(2)(A), (B), substituted "spouses, children, and parents" for "spouses and children" in heading and "Any limitation under this section on the deadlines for filing such motions shall not apply" for "The deadline specified in subsection (b)(5)(C) of this section for filing a motion to reopen does not apply" in introductory provisions.

Subsec. (c)(7)(C)(iv)(I). Pub. L. 109-162, §825(a)(2)(C), which directed substitution of " , section 1229b(b) of this title, or section 1254(a)(3) of this title (as in effect on March 31, 1997)" for "or section 1229b(b) of this title", was executed by making the substitution for "or section 1229b(b)(2) of this title", to reflect the probable intent of Congress.

Subsec. (c)(7)(C)(iv)(IV). Pub. L. 109-162, §825(a)(2)(D)-(F), added subcl. (IV).

Subsec. (e)(1). Pub. L. 109-162, §813(a)(1), substituted "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien," for "serious illness of the alien".

2005—Subsec. (c)(4) to (7). Pub. L. 109-13 added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

2000—Subsec. (c)(6)(C)(iv). Pub. L. 106-386 added cl. (iv).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-162, title VIII, §813(a)(2), Jan. 5, 2006, 119 Stat. 3058, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to a failure to appear that occurs before, on, or after the date of the enactment of this Act [Jan. 5, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-13 effective May 11, 2005, and applicable to applications for asylum, withholding, or other relief from removal made on or after such date, see section 101(h)(2) of Pub. L. 109-13, set out as a note under section 1158 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-386, div. B, title V, §1506(c)(1)(B), Oct. 28, 2000, 114 Stat. 1528, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1229-1229c) [Pub. L. 104-208]."

EFFECTIVE DATE

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Subsec. (c)(3)(B), (C) of this section applicable to proving convictions entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

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

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

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

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

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

(1) In general

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

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

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

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

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

(2) Special rule for battered spouse or child

(A) Authority

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

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

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

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

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

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

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

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

(B) Physical presence

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

(C) Good moral character

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

(D) Credible evidence considered

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

(3) Recordation of date

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

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

(A) In general

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

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

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

(B) Duration of parole

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

(5) Application of domestic violence waiver authority

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

(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 “sub-section (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—

(I) a detailed diagnosis statement from the physician, which includes the treatment being sought and the expected time period the alien will be required to remain in the United States;

(II) a statement from the health care facility containing an assurance that the alien's treatment is not being paid through any Federal or State public health assistance, that the alien's account has no outstanding balance, and that such facility will notify the Service when the alien is released or treatment is terminated; and

(III) evidence of financial ability to support the alien's day-to-day expenses while in the United States (including the expenses of any family member described in clause (ii)) and evidence that any such alien or family member is not receiving any form of public assistance; or

(ii) who—

(I) is a spouse, parent, brother, sister, son, daughter, or other family member of a principal alien described in clause (i); and

(II) entered the United States accompanying, and with the same status as, such principal alien.

(C) Waiver limitations

(i) Waivers under subparagraph (B) may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph (B)(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph (B)(i) not more than one adult may be granted a waiver under subparagraph (B)(ii).

(II) Not more than two adults may be granted a waiver under subparagraph (B)(ii) in a case in which—

(aa) the principal alien described in subparagraph (B)(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

(D) Report to Congress; suspension of waiver authority

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under subparagraph (B) during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under subparagraph (B) shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

(3) Bond

The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(4) Treatment of aliens arriving in the United States

In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 1229a of this title are (or would otherwise be) initiated at the time of such alien's arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 1225(a)(4) of this title.

(b) At conclusion of proceedings

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

(3) Bond

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(c) Aliens not eligible

The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

(d) Civil penalty for failure to depart

(1) In general

Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title.

(2) Application of VAWA protections

The restrictions on relief under paragraph (1) shall not apply to relief under section 1229b or 1255 of this title on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 1229b(b)(2) of this title, or under section 1254(a)(3) of this title (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure.

(3) Notice of penalties

The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(e) Additional conditions

The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

(f) Judicial review

No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b) of this section, nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.

(June 27, 1952, ch. 477, title II, ch. 4, §240B, as added Pub. L. 104-208, div. C, title III, §304(a)(3), Sept. 30, 1996, 110 Stat. 3009-596; amended Pub. L. 106-406, §2, Nov. 1, 2000, 114 Stat. 1755; Pub. L. 109-162, title VIII, §812, Jan. 5, 2006, 119 Stat. 3057.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsec. (d)(2), was repealed by Pub. L. 104-208, div. C, title III, §308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109-162 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection."

2000—Subsec. (a)(2). Pub. L. 106-406 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days."

EFFECTIVE DATE

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1230. Records of admission

(a) The Attorney General shall cause to be filed, as a record of admission of each immigrant, the immigrant visa required by section 1201(e) of this title to be surrendered at the port of entry by the arriving alien to an immigration officer.

(b) The Attorney General shall cause to be filed such record of the admission into the United States of each immigrant admitted under section 1181(b) of this title and of each nonimmigrant as the Attorney General deems necessary for the enforcement of the immigration laws.

(June 27, 1952, ch. 477, title II, ch. 4, §240C, formerly §240, 66 Stat. 204; renumbered §240C and amended Pub. L. 104-208, div. C, title III, §§304(a)(2), 308(f)(1)(K), Sept. 30, 1996, 110 Stat. 3009-587, 3009-621.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-208, §308(f)(1)(K), substituted "admission" for "entry".

EFFECTIVE DATE OF 1996 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1231. Detention and removal of aliens ordered removed**(a) Detention, release, and removal of aliens ordered removed****(1) Removal period****(A) In general**

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or

other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a)¹ of title 42 and paragraph (2),² the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title³ and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a

State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(b) Countries to which aliens may be removed

(1) Aliens arriving at the United States

Subject to paragraph (3)—

(A) In general

Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceed-

¹ See References in Text note below.

² So in original. Probably should be "subparagraph (B).".

³ So in original. Probably should be followed by a closing parenthesis.

ings under section 1229a of this title were initiated at the time of such alien's arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) Travel from contiguous territory

If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) Alternative countries

If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

- (i) The country of which the alien is a citizen, subject, or national.
- (ii) The country in which the alien was born.
- (iii) The country in which the alien has a residence.
- (iv) A country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) Other aliens

Subject to paragraph (3)—

(A) Selection of country by alien

Except as otherwise provided in this paragraph—

- (i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and
- (ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) Limitation on designation

An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) Disregarding designation

The Attorney General may disregard a designation under subparagraph (A)(i) if—

- (i) the alien fails to designate a country promptly;
- (ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney

General first inquires, whether the government will accept the alien into the country;

(iii) the government of the country is not willing to accept the alien into the country; or

(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) Alternative country

If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(ii) is not willing to accept the alien into the country.

(E) Additional removal countries

If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

- (i) The country from which the alien was admitted to the United States.
- (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
- (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
- (iv) The country in which the alien was born.
- (v) The country that had sovereignty over the alien's birthplace when the alien was born.
- (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
- (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) Removal country when United States is at war

When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

- (i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or
- (ii) if the recognized government of the country of which the alien is a citizen or

subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) Restriction on removal to a country where alien's life or freedom would be threatened

(A) In general

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception

Subparagraph (A) does not apply to an alien deportable under section 1227(a)(4)(D) of this title or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious non-political crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) Sustaining burden of proof; credibility determinations

In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.

(c) Removal of aliens arriving at port of entry

(1) Vessels and aircraft

An alien arriving at a port of entry of the United States who is ordered removed either without a hearing under section 1225(b)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(A) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time, or

(B) the alien is a stowaway—

(i) who has been ordered removed in accordance with section 1225(a)(1) of this title,

(ii) who has requested asylum, and

(iii) whose application has not been adjudicated or whose asylum application has been denied but who has not exhausted all appeal rights.

(2) Stay of removal

(A) In general

The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that—

(i) immediate removal is not practicable or proper; or

(ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(B) Payment of detention costs

During the period an alien is detained because of a stay of removal under subparagraph (A)(ii), the Attorney General may pay from the appropriation "Immigration and Naturalization Service—Salaries and Expenses"—

(i) the cost of maintenance of the alien; and

(ii) a witness fee of \$1 a day.

(C) Release during stay

The Attorney General may release an alien whose removal is stayed under subparagraph (A)(ii) on—

(i) the alien's filing a bond of at least \$500 with security approved by the Attorney General;

(ii) condition that the alien appear when required as a witness and for removal; and

(iii) other conditions the Attorney General may prescribe.

(3) Costs of detention and maintenance pending removal

(A) In general

Except as provided in subparagraph (B) and subsection (d)⁴ of this section, an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

(i) while the alien is detained under subsection (d)(1) of this section, and

⁴So in original. Probably should be subsection "(e)".

(ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

(I) subsection (d)(2)(A) or (d)(2)(B)(i) of this section,

(II) subsection (d)(2)(B)(ii) or (iii) of this section for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that such travel documents cannot be obtained from the country to which the stowaway is to be returned, or

(III) section 1225(b)(1)(B)(ii) of this title, for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

(B) Nonapplication

Subparagraph (A) shall not apply if—

- (i) the alien is a crewmember;
- (ii) the alien has an immigrant visa;
- (iii) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was issued;
- (iv) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien's last inspection and admission;

(v)(I) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(II) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(III) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition relating to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(vi) the individual claims to be a national of the United States and has a United States passport.

(d) Requirements of persons providing transportation

(1) Removal at time of arrival

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States shall—

- (A) receive an alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered removed under this part; and
- (B) take the alien to the foreign country to which the alien is ordered removed.

(2) Alien stowaways

An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on board the vessel or aircraft, or at such place as the Attorney General shall designate, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except pursuant to regulations of the Attorney General temporarily—

- (i) for medical treatment,
- (ii) for detention of the stowaway by the Attorney General, or
- (iii) for departure or removal of the stowaway; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

The Attorney General shall grant a timely request to remove the stowaway under subparagraph (C) on a vessel or aircraft other than that on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(3) Removal upon order

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be removed under this chapter.

(e) Payment of expenses of removal

(1) Costs of removal at time of arrival

In the case of an alien who is a stowaway or who is ordered removed either without a hearing under section 1225(a)(1)⁵ or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival, the owner of the vessel or aircraft (if any) on which the alien arrived in the United States shall pay the transportation cost of removing the alien. If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation "Immigration and Naturalization Service—Salaries and Expenses"; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(2) Costs of removal to port of removal for aliens admitted or permitted to land

In the case of an alien who has been admitted or permitted to land and is ordered re-

⁵ So in original. Probably should be "1225(b)(1)".

moved, the cost (if any) of removal of the alien to the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(3) Costs of removal from port of removal for aliens admitted or permitted to land

(A) Through appropriation

Except as provided in subparagraph (B), in the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien from the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(B) Through owner

(i) In general

In the case of an alien described in clause (ii), the cost of removal of the alien from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States.

(ii) Aliens described

An alien described in this clause is an alien who—

(I) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered removed within 5 years of the date of admission based on a ground that existed before or at the time of admission, or

(II) is an alien crewman permitted to land temporarily under section 1282 of this title and is ordered removed within 5 years of the date of landing.

(C) Costs of removal of certain aliens granted voluntary departure

In the case of an alien who has been granted voluntary departure under section 1229c of this title and who is financially unable to depart at the alien's own expense and whose removal the Attorney General deems to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter.

(f) Aliens requiring personal care during removal

(1) In general

If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable person for that purpose who shall accompany and care for the alien until the alien arrives at the final destination.

(2) Costs

The costs of providing the service described in paragraph (1) shall be defrayed in the same manner as the expense of removing the accompanied alien is defrayed under this section.

(g) Places of detention

(1) In general

The Attorney General shall arrange for appropriate places of detention for aliens de-

tained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation "Immigration and Naturalization Service—Salaries and Expenses", without regard to section 6101 of title 41, amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(2) Detention facilities of the Immigration and Naturalization Service

Prior to initiating any project for the construction of any new detention facility for the Service, the Commissioner shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use.

(h) Statutory construction

Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(i) Incarceration

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—

(A) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or

(B) take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the Attorney General.

(3) For purposes of this subsection, the term "undocumented criminal alien" means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;

(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

(4)(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal

incarceration of undocumented criminal aliens who have committed aggravated felonies.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated to carry out this subsection—

(A) \$750,000,000 for fiscal year 2006;

(B) \$850,000,000 for fiscal year 2007; and

(C) \$950,000,000 for each of the fiscal years 2008 through 2011.

(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.

(June 27, 1952, ch. 477, title II, ch. 4, §241, as added and amended Pub. L. 104-208, div. C, title III, §§305(a)(3), 306(a)(1), 328(a)(1), Sept. 30, 1996, 110 Stat. 3009-598, 3009-607, 3009-630; Pub. L. 107-273, div. C, title I, §11014, Nov. 2, 2002, 116 Stat. 1824; Pub. L. 109-13, div. B, title I, §101(c), May 11, 2005, 119 Stat. 303; Pub. L. 109-162, title XI, §1196(a), (b), Jan. 5, 2006, 119 Stat. 3130.)

REFERENCES IN TEXT

Section 259 of title 42, referred to in subsec. (a)(4)(A), was repealed by Pub. L. 106-310, div. B, title XXXIV, §3405(a), Oct. 17, 2000, 114 Stat. 1221.

This chapter, referred to in subsecs. (a)(4)(B), (5), (d)(3), and (e)(2), (3)(A), (C), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, 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

In subsec. (g)(1), “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes (41 U.S.C. 5)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

The text of subsec. (j) of section 1252 of this title, which was redesignated as subsec. (i) of this section by Pub. L. 104-208, §306(a)(1), was based on section 242(j) of act June 27, 1952, ch. 477, title II, ch. 5, as added Sept. 13, 1994, Pub. L. 103-322, title II, §20301(a), 108 Stat. 1823.

PRIOR PROVISIONS

A prior section 241 of act June 27, 1952, was renumbered section 237, and is classified to section 1227 of this title.

AMENDMENTS

2006—Subsec. (i)(5). Pub. L. 109-162, §1196(a), substituted “appropriated to carry out this subsection—” for “appropriated such sums as may be necessary to carry out this subsection in fiscal years 2003 and 2004.” and added subpars. (A) to (C).

Subsec. (i)(6). Pub. L. 109-162, §1196(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “To the extent of available appropriations, funds otherwise made available under this section with respect to a State (or political subdivision, including a municipality) for incarceration of an undocumented criminal alien may, at the discretion of the recipient of the funds, be used for the costs of imprisonment of such alien in a State, local, or municipal prison or jail.”

2005—Subsec. (b)(3)(C). Pub. L. 109-13 added subpar. (C).

2002—Subsec. (i)(5). Pub. L. 107-273 substituted “in fiscal years 2003 and 2004” for provisions which authorized specified amounts to be appropriated from the Violent Crime Reduction Trust Fund for fiscal years 1995 to 2002 as set out in subpars. (A) to (F).

1996—Subsec. (i). Pub. L. 104-208, §306(a)(1), redesignated subsec. (j) of section 1252 of this title as subsec. (i) of this section. See Codification note above.

Subsec. (i)(3)(A). Pub. L. 104-208, §328(a)(1)(A), substituted “felony or two or more misdemeanors” for “felony and sentenced to a term of imprisonment”.

Subsec. (i)(6). Pub. L. 104-208, §328(a)(1)(B), added par. (6).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-162, title XI, §1196(d), as added by Pub. L. 109-271, §8(n)(6), Aug. 12, 2006, 120 Stat. 768, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2006.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-13 effective May 11, 2005, and applicable to applications for asylum, withholding, or other relief from removal made on or after such date, see section 101(h)(2) of Pub. L. 109-13, set out as a note under section 1158 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 306(a)(1) of Pub. L. 104-208 applicable as provided under section 309 of Pub. L. 104-208 (see Effective Date note below), see section 306(c) of Pub. L. 104-208, as amended, set out as a note under section 1252 of this title.

Section 328(a)(2) of div. C of Pub. L. 104-208 provided that: “The amendment made by paragraph (1) [amending this section] shall apply beginning with fiscal year 1997.”

EFFECTIVE DATE

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

UNITED STATES POLICY WITH RESPECT TO INVOLUNTARY RETURN OF PERSONS IN DANGER OF SUBJECTION TO TORTURE

Pub. L. 105-277, div. G, subdiv. B, title XXII, §2242, Oct. 21, 1998, 112 Stat. 2681-822, provided that:

“(a) POLICY.—It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

“(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act [Oct. 21, 1998], the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisions contained in the United States Senate resolution of ratification of the Convention.

“(c) EXCLUSION OF CERTAIN ALIENS.—To the maximum extent consistent with the obligations of the United States under the Convention, subject to any res-

ervations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).

“(d) REVIEW AND CONSTRUCTION.—Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

“(e) AUTHORITY TO DETAIN.—Nothing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

“(f) DEFINITIONS.—

“(1) CONVENTION DEFINED.—In this section, the term ‘Convention’ means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

“(2) SAME TERMS AS IN THE CONVENTION.—Except as otherwise provided, the terms used in this section have the meanings given those terms in the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.”

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

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

PILOT PROGRAM ON USE OF CLOSED MILITARY BASES FOR DETENTION OF INADMISSIBLE OR DEPORTABLE ALIENS

Section 387 of div. C of Pub. L. 104-208 provided that:“(a) ESTABLISHMENT.—The Attorney General and the Secretary of Defense shall establish one or more pilot programs for up to 2 years each to determine the feasibility of the use of military bases, available because of actions under a base closure law, as detention centers by the Immigration and Naturalization Service. In selecting real property at a military base for use as a detention center under the pilot program, the Attorney General and the Secretary shall consult with the redevelopment authority established for the military base and give substantial deference to the redevelopment plan prepared for the military base.

“(b) REPORT.—Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, together with the Secretary of Defense, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate, and the Committees on Armed Services of the House of Representatives and of the Senate, on the feasibility of using military bases closed under a base closure law as detention centers by the Immigration and Naturalization Service.

“(c) DEFINITION.—For purposes of this section, the term ‘base closure law’ means each of the following:

“(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

“(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

“(3) Section 2687 of title 10, United States Code.

“(4) Any other similar law enacted after the date of the enactment of this Act [Sept. 30, 1996].”

INTERIOR REPATRIATION PROGRAM

Section 388 of div. C of Pub. L. 104-208 provided that:“Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the Secretary of State, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of the program of interior repatriation developed under section 437 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) [set out as a note below].”

Pub. L. 104-132, title IV, §437, Apr. 24, 1996, 110 Stat. 1275, provided that:“Not later than 180 days after the date of enactment of this Act [Apr. 24, 1996], the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country’s border with the United States.”

TERMINATION OF LIMITATION

Pub. L. 103-322, title II, §20301(c), Sept. 13, 1994, 108 Stat. 1824, as amended by Pub. L. 104-208, div. C, title III, §308(g)(5)(G), Sept. 30, 1996, 110 Stat. 3009-623, provided that notwithstanding subsec. (h)(5) [(i)(5)] of this section the requirements of subsec. (h) [i] of this section were not to be subject to the availability of appropriations on and after Oct. 1, 2004, prior to repeal by Pub. L. 109-162, title XI, §1172(c), Jan. 5, 2006, 119 Stat. 3123.

§ 1232. Enhancing efforts to combat the trafficking of children

(a) Combating child trafficking at the border and ports of entry of the United States

(1) Policies and procedures

In order to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.

(2) Special rules for children from contiguous countries

(A) Determinations

Any unaccompanied alien child who is a national or habitual resident of a country that is contiguous with the United States shall be treated in accordance with subparagraph (B), if the Secretary of Homeland Security determines, on a case-by-case basis, that—

(i) such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child’s country of nationality or of last habitual residence;

(ii) such child does not have a fear of returning to the child’s country of national-

ity or of last habitual residence owing to a credible fear of persecution; and

(iii) the child is able to make an independent decision to withdraw the child's application for admission to the United States.

(B) Return

An immigration officer who finds an unaccompanied alien child described in subparagraph (A) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may—

(i) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(ii) return such child to the child's country of nationality or country of last habitual residence.

(C) Contiguous country agreements

The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States with respect to the repatriation of children. Such agreements shall be designed to protect children from severe forms of trafficking in persons, and shall, at a minimum, provide that—

(i) no child shall be returned to the child's country of nationality or of last habitual residence unless returned to appropriate employees or officials, including child welfare officials where available, of the accepting country's government;

(ii) no child shall be returned to the child's country of nationality or of last habitual residence outside of reasonable business hours; and

(iii) border personnel of the countries that are parties to such agreements are trained in the terms of such agreements.

(3) Rule for other children

The custody of unaccompanied alien children not described in paragraph (2)(A) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(4) Screening

Within 48 hours of the apprehension of a child who is believed to be described in paragraph (2)(A), but in any event prior to returning such child to the child's country of nationality or of last habitual residence, the child shall be screened to determine whether the child meets the criteria listed in paragraph (2)(A). If the child does not meet such criteria, or if no determination can be made within 48 hours of apprehension, the child shall immediately be transferred to the Secretary of Health and Human Services and treated in accordance with subsection (b). Nothing in this paragraph may be construed to preclude an earlier transfer of the child.

(5) Ensuring the safe repatriation of children

(A) Repatriation pilot program

To protect children from trafficking and exploitation, the Secretary of State shall

create a pilot program, in conjunction with the Secretary of Health and Human Services and the Secretary of Homeland Security, nongovernmental organizations, and other national and international agencies and experts, to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies.

(B) Assessment of country conditions

The Secretary of Homeland Security shall consult the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(C) Report on repatriation of unaccompanied alien children

Not later than 18 months after December 23, 2008, and annually thereafter, the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to improve repatriation programs for unaccompanied alien children. Such report shall include—

(i) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(ii) a statement of the nationalities, ages, and gender of such children;

(iii) a description of the policies and procedures used to effect the removal of such children from the United States and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last habitual residence, including a description of the repatriation pilot program created pursuant to subparagraph (A);

(iv) a description of the type of immigration relief sought and denied to such children;

(v) any information gathered in assessments of country and local conditions pursuant to paragraph (2); and

(vi) statistical information and other data on unaccompanied alien children as provided for in section 279(b)(1)(J) of title 6.

(D) Placement in removal proceedings

Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2), shall be—

(i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a);

(ii) eligible for relief under section 240B of such Act (8 U.S.C. 1229c) at no cost to the child; and

(iii) provided access to counsel in accordance with subsection (c)(5).

(b) Combating child trafficking and exploitation in the United States

(1) Care and custody of unaccompanied alien children

Consistent with section 279 of title 6, and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.

(2) Notification

Each department or agency of the Federal Government shall notify the Department of Health and Human Services¹ within 48 hours upon—

(A) the apprehension or discovery of an unaccompanied alien child; or

(B) any claim or suspicion that an alien in the custody of such department or agency is under 18 years of age.

(3) Transfers of unaccompanied alien children

Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.

(4) Age determinations

The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.

(c) Providing safe and secure placements for children

(1) Policies and programs

The Secretary of Health and Human Services, Secretary of Homeland Security, Attorney General, and Secretary of State shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity, including policies and programs reflecting best practices in witness security programs.

(2) Safe and secure placements

Subject to section 279(b)(2) of title 6, an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive set-

ting that is in the best interest of the child. In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)), if a suitable family member is not available to provide care. A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis, in accordance with procedures prescribed by the Secretary, to determine if such placement remains warranted.

(3) Safety and suitability assessments

(A) In general

Subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.

(B) Home studies

Before placing the child with an individual, the Secretary of Health and Human Services shall determine whether a home study is first necessary. A home study shall be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in section 12102 of title 42), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.

(C) Access to information

Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases.

(4) Legal orientation presentations

The Secretary of Health and Human Services shall cooperate with the Executive Office

¹ So in original. Probably should be capitalized.

for Immigration Review to ensure that custodians receive legal orientation presentations provided through the Legal Orientation Program administered by the Executive Office for Immigration Review. At a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.

(5) Access to counsel

The Secretary of Health and Human Services shall ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.

(6) Child advocates

The Secretary of Health and Human Services is authorized to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. A child advocate shall be provided access to materials necessary to effectively advocate for the best interest of the child. The child advocate shall not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child in the course of serving as a child advocate. The child advocate shall be presumed to be acting in good faith and be immune from civil and criminal liability for lawful conduct of duties as described in this provision.

(d) Permanent protection for certain at-risk children

(1) Omitted

(2) Expedient adjudication

All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.

(3) Omitted

(4) Eligibility for assistance

(A) In general

A child who has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) and who was either in the custody of the Secretary of Health and Human Services at the time a dependency order was granted for such child or who was receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of

1980 (8 U.S.C. 1522 note) at the time such dependency order was granted, shall be eligible for placement and services under section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) until the earlier of—

- (i) the date on which the child reaches the age designated in section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)); or
- (ii) the date on which the child is placed in a permanent adoptive home.

(B) State reimbursement

Subject to the availability of appropriations, if State foster care funds are expended on behalf of a child who is not described in subparagraph (A) and has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.

(5) State courts acting in loco parentis

A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 279 of title 6.

(6) Transition rule

Notwithstanding any other provision of law, an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after December 23, 2008, based on age if the alien was a child on the date on which the alien applied for such status.

(7) Omitted

(8) Specialized needs of unaccompanied alien children

Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases.

(e) Training

The Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, state¹ and local personnel, who have substantive contact with unaccompanied alien children. Such personnel shall be trained to work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate, including children described in subsection (a)(2).

(f) Omitted**(g) Definition of unaccompanied alien child**

For purposes of this section, the term “unaccompanied alien child” has the meaning given such term in section 279(g) of title 6.

(h) Effective date

This section—

(1) shall take effect on the date that is 90 days after December 23, 2008; and

(2) shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on December 23, 2008.

(i) Grants and contracts

The Secretary of Health and Human Services may award grants to, and enter into contracts with, voluntary agencies to carry out this section and section 279 of title 6.

(Pub. L. 110-457, title II, § 235, Dec. 23, 2008, 122 Stat. 5074.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, 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 is comprised of section 235 of Pub. L. 110-457. Pars. (1), (3), and (7) of section 235(d) of Pub. L. 110-457 amended sections 1101, 1255, and 1158 of this title, respectively. Section 235(f) of Pub. L. 110-457 amended section 279 of Title 6, Domestic Security.

Section was enacted as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Immigration and Nationality Act which comprises this chapter.

PART V—ADJUSTMENT AND CHANGE OF STATUS

§ 1251. Transferred

CODIFICATION

Section 1251, act June 27, 1952, ch. 477, title II, ch. 5, § 241, 66 Stat. 204, as amended, which related to deportable aliens, was renumbered section 237 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104-208, div. C, title III, § 305(a)(2), Sept. 30, 1996, 110 Stat. 3009-598, and was transferred to section 1227 of this title.

§ 1251a. Repealed. Pub. L. 87-301, § 24(a)(3), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85-316, § 7, Sept. 11, 1957, 71 Stat. 640, excepted spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945, and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence

who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissible and the Attorney General consented. See section 1182(h) of this title.

§ 1252. Judicial review of orders of removal**(a) Applicable provisions****(1) General orders of removal**

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review**(A) Review relating to section 1225(b)(1)**

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e) of this section, any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,

(ii) except as provided in subsection (e) of this section, a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e) of this section, procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including