69, § 3, 40 Stat. 548; on the subject of section 408 see sections 1421(c) and 1443(c) of this title, and on the subject of section 409 see sections 1445(a)–(d), (f), and 1449 of this title. Sections 410 to 415, relating to the punishment of crimes in connection with the naturalization of aliens, were from act June 29, 1906, ch. 3592, §§ 18, 20–24, respectively, 34 Stat. 602, 603; present provisions are contained in sections 1451(a), (b), (d), (e), (g)–(i) and 1459 of this title and sections 911, 1015, 1421–1429, 1719 and 3282 of Title 18, Crimes and Criminal Procedure.

Section 416, authorizing punishment of offenses against naturalization laws committed prior to May 9, 1918, under laws then in effect but since repealed, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from act May 9, 1918, ch. 69, § 2, 40 Stat. 547. See note set out under section 1101 of this title.

CHAPTER 10—ALIEN REGISTRATION

§§ 451 to 460. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(39), 66 Stat. 280, eff. Dec. 24, 1952

Section 451, act June 28, 1940, ch. 439, title III, § 30, 54 Stat. 673, required an alien seeking entry into United States to be registered and fingerprinted before the issuance to him of a visa. See sections 1182(a)(20), (26), 1201(b) and 1301 of this title.

Section 452, act June 28, 1940, ch. 439, title III, § 31, 54 Stat. 673, related to registration of aliens in United States. See section 1302 of this title.

Section 453, act June 28, 1940, ch. 439, title III, § 32, 54 Stat. 674, related to special provisions governing registration. See section 1303 of this title.

Section 454, act June 28, 1940, ch. 439, title III, § 33, 54 Stat. 674, related to places of registration and duties of postmasters.

Section 455, act June 28, 1940, ch. 439, title III, § 34, 54 Stat. 674, related to forms and procedure, confidential status of records and oaths in connection with the registration and fingerprinting of aliens. See section 1304 of this title.

Section 456, acts June 28, 1940, ch. 439, title III, § 35, 54 Stat. 675; Sept. 23, 1950, ch. 1024, title I, § 24(a), 64 Stat. 1012, related to notice of change of address. See section 1305 of this title.

Section 457, acts June 28, 1940, ch. 439, title III, § 36, 54 Stat. 675; Oct. 13, 1941, ch. 432, 55 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 24(b), 64 Stat. 1013, related to penalties. See section 1306 of this title.

Section 458, act June 28, 1940, ch. 439, title III, § 37, 54 Stat. 675, related to administration and enforcement of registration law. See section 1306 of this title.

Section 459, act June 28, 1940, ch. 439, title III, § 38, 54 Stat. 675, related to definitions and effective date. See section 1101(a)(8), (38) of this title.

Section 460, act June 28, 1940, ch. 439, title III, § 39, 54 Stat. 676, related to registration of aliens in Canal Zone.

NATIONALITY ACT OF 1940

On October 14, 1940, and subsequent to the enactment of former section 451 et seq. of this title, Congress passed the Nationality Act of 1940 [former section 501 et seq. of this title] for the purpose of consolidating and restating the laws of the United States upon citizenship, naturalization and expatriation. Said act contained further provisions relating to registry of aliens [former sections 728 and 746(*l*) of this title], and former section 504 thereof, in addition to certain specific repeals, provided that all acts or parts of acts in conflict therewith were thereby repealed.

CHAPTER 11—NATIONALITY

SUBCHAPTER I—DEFINITIONS

§§ 501 to 504. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Sections, act Oct. 14, 1940, ch. 876, title I, subch. I, §§ 101–104, 54 Stat. 1137, 1138, related to definitions and place of general abode. See various provisions of section 1101 of this title.

SUBCHAPTER II—NATIONALITY AT BIRTH

§§ 601 to 605. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 601, acts Oct. 14, 1940, ch. 876, title I, subch. II, § 201, 54 Stat. 1138; July 31, 1946, ch. 708, 60 Stat. 721, related to persons born nationals and citizens. See section 1401 of this title.

Sections 602 to 605, act Oct. 14, 1940, ch. 876, title I, subch. II, §§ 202–205, 54 Stat. 1139, related to citizens by birth in Puerto Rico, Canal Zone or Panama, nationals but not citizens and children born out of wedlock. See sections 1402, 1403, 1408, 1409(a), (c), and 1407, respectively, of this title.

§ 606. Transferred

CODIFICATION

Section transferred to section 1421*l* of Title 48, Territories and Insular Possessions. That section was later repealed. See section 1407 of this title.

SUBCHAPTER III—NATIONALITY THROUGH NATURALIZATION

§§ 701 to 724a. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(40), (42), 66 Stat. 279, 280, eff. Dec. 24, 1952

Section 701, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 301, 54 Stat. 1140, related to jurisdiction to naturalize. See section 1421 of this title.

Section 702, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 302, 54 Stat. 1140, related to sex or marriage, as affecting eligibility for naturalization. See section 1422 of this title.

Section 703, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 303, 54 Stat. 1140; Dec. 17, 1943, ch. 344, § 3, 57 Stat. 601; July 2, 1946, ch. 534, § 1, 60 Stat. 416; Aug. 1, 1950, ch. 512, § 4(b), 64 Stat. 385, related to races affecting eligibility. See section 1422 of this title.

Section 704, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 304, 54 Stat. 1140; Sept. 23, 1950, ch. 1024, title I, § 30, 64 Stat. 1018, related to language, history and principles of government affecting eligibility. See section 1423 of this title.

Section 705, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 305, 54 Stat. 1141; Sept. 23, 1950, ch. 1024, title I, § 25, 64 Stat. 1013, related to exclusion from naturalization. See sections 1424(a)–(c), 1427(f), and 1451(c) of this title.

Section 706, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 306, 54 Stat. 1141, related to desertion from the armed forces or evasion of draft as affecting eligibility. See section 1425 of this title.

Section 707, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 307, 54 Stat. 1142, related to residence as affecting eligibility. See sections 1427(a)–(c) and 1441(a)(2) of this title.

Section 708, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 308, 54 Stat. 1143, related to temporary absence of clergyman as affecting eligibility. See section 1428 of this title.

Section 709, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 309, 54 Stat. 1143, related to requirements as to

proof of eligibility. See sections 1446(f)–(h) and 1447(e) of this title.

Section 710, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 310, 54 Stat. 1144, related to married persons being excepted from certain requirements. See section 1430(a) of this title.

Section 711, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 311, 54 Stat. 1145, related to spouse of United States citizen residing in United States, in marital union prior to petition. See section 1430(a) of this title.

Section 712, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 312, 54 Stat. 1145, related to alien whose spouse is United States citizen regularly stationed abroad by United States employer. See section 1430(b) of this title.

Section 713, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 313, 54 Stat. 1145, related to children born outside United States, one parent a continuous United States citizen and the other an alien subsequently naturalized. See section 1431 of this title.

Section 714, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 314, 54 Stat. 1145, related to children born outside United States, both parents aliens, or one an alien and the other a citizen subsequently losing citizenship. See section 1432 of this title.

Section 715, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 315, 54 Stat. 1146, related to children born of one parent a United States citizen. See section 1433 of this title.

Section 716, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 316, 54 Stat. 1146, related to children adopted by United States citizens. See section 1434(a) of this title.

Section 717, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 317, 54 Stat. 1146, related to former citizens being excepted from certain requirements. See sections 1435(a), (c) and 1482 of this title.

Sections 718 to 720, act Oct. 14, 1940, ch. 876, title I, subchap. III, §§ 318–320, 54 Stat. 1147, 1148, related respectively to citizenship lost by parent's expatriation, minor child's citizenship lost through cancellation of parent's naturalization and the exception from certain requirements of persons misinformed of citizenship status. Sections 718 and 719 are covered by sections 1482 and 1451(f), respectively, of this title.

Section 720a, act July 2, 1940, ch. 512, §§ 1, 2, 54 Stat. 715, related to aliens spending childhood in United States as excepted from certain requirements.

Section 721, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 321, 54 Stat. 1148, related to nationals but not citizens of the United States. See section 1436 of this title.

Section 721a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 321a, as added July 2, 1946, ch. 534, § 2, 60 Stat. 417, related to resident Filipinos excepted from certain requirements. See section 1437 of this title.

Section 722, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 322, 54 Stat. 1148, related to persons born in Puerto Rico of alien parents. See section 1402 of this title.

Section 723, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 323, 54 Stat. 1149; Apr. 2, 1942, ch. 208, 56 Stat. 198; Aug. 7, 1946, ch. 769, 60 Stat. 865; Aug. 16, 1951, ch. 321, § 2, 65 Stat. 191, related to former United States citizens losing citizenship by entering armed forces of nonenemy countries during World Wars I and II. See section 1438(a) of this title.

Section 723a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 323a, as added Dec. 7, 1942, ch. 690, 56 Stat. 1041, related to naturalization of persons serving in the armed forces of United States during World War I and earlier wars. See section 1440(a) of this title.

Section 724, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 324, 54 Stat. 1149; July 2, 1946, ch. 534, § 3, 60 Stat. 417, related to persons serving in the armed forces of the United States. See section 1439 of this title.

Section 724a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 324a, as added June 1, 1948, ch. 360, § 1, 62 Stat. 282; amended June 29, 1949, ch. 274, 63 Stat. 282, related to persons serving on active duty in armed forces of United States during World Wars I and II. See section 1440(a)–(c) of this title.

§ 724a–1. Transferred

CODIFICATION

Section, acts June 30, 1950, ch. 443, § 4, 64 Stat. 316; June 27, 1952, ch. 477, title IV, § 402(e), 66 Stat. 276, is set out as a note under section 1440 of this title.

§§ 725 to 727. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 725, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 325, 54 Stat. 1150; Sept. 23, 1950, ch. 1024, title I, § 26, 64 Stat. 1015, related to aliens serving on certain United States vessels. See section 1441(a)(1) of this title.

Section 726, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 326, 54 Stat. 1150, related to alien enemies. See section 1442(a)–(c), (e) of this title.

Section 727, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 327, 54 Stat. 1150; May 16, 1947, ch. 72, 61 Stat. 97, related to administration of naturalization laws. See section 1443 of this title.

§ 727a. Repealed. Feb. 29, 1952, ch. 49, § 3, 66 Stat. 10

Section, act May 3, 1940, ch. 183, § 2, 54 Stat. 178, related to patriotic address to new citizens. See section 154 of Title 36, Patriotic Societies and Observances.

§§ 728 to 746. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), (46), 66 Stat. 280, eff. Dec. 24, 1952

Section 728, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 328, 54 Stat. 1151, related to registration of aliens. See sections 1230 and 1259 of this title.

Section 729, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 329, 54 Stat. 1152; Sept. 23, 1950, ch. 1024, title I, § 27, 64 Stat. 1015, related to certificate of arrival. See section 1429 of this title.

Section 730, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 330, 54 Stat. 1152, related to photographs. See section 1444 of this title.

Section 731, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 331, 54 Stat. 1153; May 31, 1947, ch. 87, § 1, 61 Stat. 121, related to declaration of intention. See section 1445(f) of this title.

Section 732, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 332, 54 Stat. 1154; May 31, 1947, ch. 87, § 2, 61 Stat. 122; June 25, 1948, ch. 656, 62 Stat. 1026, related to petition for naturalization. See section 1445(a)–(d) of this title.

Section 732a, act May 31, 1947, ch. 87, § 5, 61 Stat. 122, related to waiver of appearance or petition for naturalization. See section 1445(e) of this title.

Section 733, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 333, 54 Stat. 1156; Sept. 23, 1950, ch. 1024, title I, § 28(a), 64 Stat. 1016, related to hearings on petitions. See section 1446(a)–(e) of this title.

Section 734, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 334, 54 Stat. 1156; May 31, 1947, ch. 87, § 3, 61 Stat. 122; Sept. 23, 1950, ch. 1024, title I, § 28(b), 64 Stat. 1016, related to final hearings. See section 1447(a)–(d), (f) of this title.

Section 735, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 335, 54 Stat. 1157; May 31, 1947, ch. 87, § 4, 61 Stat. 122; Sept. 23, 1950, ch. 1024, title I, § 29, 64 Stat. 1017, related to oath of renunciation and allegiance. See section 1448 of this title.

Section 736, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 336, 54 Stat. 1157, related to certificate of naturalization. See section 1449 of this title.

Section 737, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 337, 54 Stat. 1158, related to functions and duties of the clerks of courts. See sections 1449 and 1450 of this title.

Section 738, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 338, 54 Stat. 1158, related to revocation of naturalization. See section 1451(a), (b), (d), (e), (g)–(i) of this title.

Section 739, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 339, 54 Stat. 1160; Jan. 20, 1944, ch. 2, § 3, 58 Stat. 4; July 23, 1947, ch. 304, § 2, 61 Stat. 414, related to certificates of derivative citizenship. See section 1452 of this title.

Section 740, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 340, 54 Stat. 1160, related to revocation of certificates issued by the commissioner or deputy. See section 1453 of this title.

Section 741, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 341, 54 Stat. 1160, related to documents and copies issued by commissioner or deputy. See section 1454 of this title.

Section 742, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 342, 54 Stat. 1161; Jan. 20, 1944, ch. 2, § 3, 58 Stat. 5; Sept. 27, 1944, ch. 415, 58 Stat. 745; Sept. 28, 1944, ch. 446, §§ 1, 2, 58 Stat. 755; Nov. 21, 1945, ch. 490, 59 Stat. 585; July 1, 1947, ch. 194, 61 Stat. 240, related to fiscal provisions. See section 1455 of this title.

Sections 743 to 745, act Oct. 14, 1940, ch. 876, title I, subchap. III, §§ 343–345, 54 Stat. 1163, related to mail, textbooks, and compilation of naturalization statistics. See sections 1457 and 1458 of this title.

Section 746, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 346, 54 Stat. 1163; June 25, 1948, ch. 645, § 21, 62 Stat. 862, related to penal provisions. See section 1459 of this title and sections 911, 1015, 1421–1429, 1719, and 3282 of Title 18, Crimes and Criminal Procedure.

§ 747. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 347, 54 Stat. 1168, related to saving clauses. Similar subject matter is contained in note under section 1101 of this title.

SUBCHAPTER IV—LOSS OF NATIONALITY

§ 800. Transferred

CODIFICATION

Section, R.S. § 1999, is set out as a note under section 1481 of this title.

§§ 801 to 810. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 801, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 401, 54 Stat. 1168; Jan. 20, 1944, ch. 2, § 1, 58 Stat. 4; July 1, 1944, ch. 368, § 1, 58 Stat. 677; Sept. 27, 1944, ch. 418, § 1, 58 Stat. 746, related to general means of losing United States nationality. See section 1481(a) of this title.

Section 802, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 402, 54 Stat. 1169, related to presumption of expatriation. See section 1482 of this title.

Section 803, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 403, 54 Stat. 1169; July 1, 1944, ch. 368, § 2, 58 Stat. 677, related to restrictions on expatriation. See sections 1482 and 1483(b) of this title.

Section 804, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 404, 54 Stat. 1170, related to expatriation of naturalized nationals by residence abroad. See section 1484(a) of this title.

Section 805, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 405, 54 Stat. 1170, related to exceptions in the case of persons employed or compensated by United States while residing abroad. See section 1485(1), (2) of this title.

Section 806, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 406, 54 Stat. 1170; Dec. 8, 1942, ch. 696, 56 Stat. 1043; Dec. 24, 1942, ch. 819, 56 Stat. 1085, related to additional exceptions. See section 1485(3)–(9) of this title.

Section 807, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 407, 54 Stat. 1170, related to minor children of naturalized nationals losing nationality by foreign residence. See section 1487 of this title.

Section 808, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 408, 54 Stat. 1171, related to exclusiveness of means of losing nationality. See section 1488 of this title.

Section 809, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 409, 54 Stat. 1171; Oct. 16, 1941, ch. 446, 55 Stat. 743; Oct. 9, 1942, ch. 585, 56 Stat. 779; Sept. 27, 1944, ch. 419, 58 Stat. 747; Oct. 11, 1945, ch. 410, 59 Stat. 544, related to nationality not lost under sections 804 or 807 until October, 1942. See section 1487 of this title.

Section 810, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 410, 54 Stat. 1171, related to chapter being inapplicable where it contravened convention of treaties. See section 1489 of this title.

SUBCHAPTER V—MISCELLANEOUS

§§ 901 to 903. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 901, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 501, 54 Stat. 1171, related to procedure when diplomatic officials believe that persons in foreign state have lost American nationality. See section 1501 of this title.

Section 902, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 502, 54 Stat. 1171, related to certificates of nationality for non-naturalized United States nationals. See section 1502 of this title.

Section 903, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 503, 54 Stat. 1171, related to judicial proceedings for declaration of United States nationality in event of denial of rights and privileges as national. See section 1503 of this title.

§§ 903a, 903b. Transferred

CODIFICATION

Sections 903a and 903b transferred to sections 1731 and 1732, respectively, of Title 22, Foreign Relations and Intercourse.

§§ 904 to 907. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 904, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 504, 54 Stat. 1172, related to repeals.

Section 905, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 505, 54 Stat. 1174, related to separability clause.

Section 906, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 505, 54 Stat. 1174, related to effective date of chapter.

Section 907, act Oct. 14, 1940, ch. 876, title I, § 1, 54 Stat. 1137, related to short title of chapter.

SPECIFIC REPEALS BY ACT OCTOBER 14, 1940

In addition to the provisions from which former section 904 was taken, section 504 of act Oct. 14, 1940, specifically repealed all or parts of the following: Title 8, §§ 1, 3, 5a–1, 5d, 5e, 6, 7, 8, 9, 9a, 11, 16, 17, 17a, 18, 106, 106a, 106b, 106c, 351, 352, 353, 354, 356, 356a, 357, 358, 358a, 360, 362, 364, 365, 366, 366a, 367, 368, 368a, 369, 369a, 372, 372a, 373, 377, 377b, 377c, 378, 379, 380, 380a, 380b, 381, 382, 382a, 382b, 382c, 384, 385, 386, 387, 388, 389, 390, 391, 392, 392b, 392c note, 392d note, 392e, 392f, 392g, 393, 394, 395, 396, 397, 398, 399, 399a, 399b, 399c, 399d, 399e, 399f, 400, 401, 402, 403, 404, 405, 408, 409, 410, 411, 412, 413, 414, 415; Title 18, §§ 135, 137, 138, 139, 140, 141, 142, 143; Title 39, § 324; Title 48, § 733b; Title 50 App. § 202.

SUBCHAPTER VI—NATURALIZATION OF PERSONS SERVING IN THE ARMED FORCES OF THE UNITED STATES DURING WORLD WAR II

§§ 1001 to 1006. Repealed. June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952

Section 1001, act Oct. 14, 1940, ch. 876, title III, § 701, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat. 182;

amended Dec. 22, 1944, ch. 662, §1, 58 Stat. 886; Dec. 28, 1945, ch. 590, §1(c)(1), 59 Stat. 658, related to exceptions from certain requirements of naturalization of persons serving in the armed forces during World War II. See section 1440 of this title.

Section 1002, act Oct. 14, 1940, ch. 876, title III, §702, as added Mar. 27, 1942, ch. 199, title X, §1001, 56 Stat. 182; amended Dec. 22, 1944, ch. 662, §2, 58 Stat. 887, related to alien serving outside of jurisdiction of naturalization court. See section 1440 of this title.

Section 1003, act Oct. 14, 1940, ch. 876, title III, §703, as added Mar. 27, 1942, ch. 199, title X, §1001, 56 Stat. 183, related to waiver of notice to commissioner in case of alien enemy. See section 1440 of this title.

Section 1004, act Oct. 14, 1940, ch. 876, title III, §704, as added Mar. 27, 1942, ch. 199, title X, §1001, 56 Stat. 183, related to persons excepted from former subchapter. See section 1440 of this title.

Section 1005, act Oct. 14, 1940, ch. 876, title III, §705, as added Mar. 27, 1942, ch. 199, title X, §1001, 56 Stat. 183, related to forms, rules and regulations. See section 1440 of this title.

Section 1006, act Oct. 14, 1940, ch. 876, title III, §706, as added Dec. 28, 1945, ch. 590, §1(c)(2), 59 Stat. 658, related to time of service limitation. See section 1440 of this title.

CHAPTER 12—IMMIGRATION AND NATIONALITY

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1308–3, 1996, 2020, 3508; title 10 sections 3253, 8253, 12102, 12201; title 15 section 278g; title 18 section 1203; title 19 section 3401; title 22 sections 2454, 2778, 3303, 5711; title 25 section 1300b–13; title 42 section 6705; title 46 section 8103; title 50 sections 47c, 47f.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1101. Definitions

(a) As used in this chapter—

(1) The term ''administrator'' means the official designated by the Secretary of State pursuant to section 1104(b) of this title.

(2) The term ''advocates'' includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term ''alien'' means any person not a citizen or national of the United States.

(4) The term ''application for admission'' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term ''Attorney General'' means the Attorney General of the United States.

(6) The term ''border crossing identification card'' means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations.

(7) The term ''clerk of court'' means a clerk of a naturalization court.

(8) The terms ''Commissioner'' and ''Deputy Commissioner'' mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term ''consular officer'' means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas.

(10) The term ''crewman'' means a person serving in any capacity on board a vessel or aircraft.

(11) The term ''diplomatic visa'' means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term ''doctrine'' includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13) The term ''entry'' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary: *Provided*, That no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

(14) The term ''foreign state'' includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term ''immigrant'' means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of his calling as a crewman and to depart from Guam with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited represent-

ative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i)(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) an alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry, and the minor children of such fiancee or fiance accompanying him or following to join him;

(L) an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I);

(O) an alien who—

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who—

(i)(a) is described in section 1184(c)(4)(A) of this title (relating to athletes), or (b) is described in section 1184(c)(4)(B) of this title (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii); or

(S) subject to section 1184(j) of this title, an alien—

(i) who the Attorney General determines—

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 2708(a) of title 22,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien.

(16) The term ''immigrant visa'' means an immigrant visa required by this chapter and prop-

erly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term ''immigration laws'' includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(18) The term ''immigration officer'' means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term ''ineligible to citizenship,'' when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [50 App. U.S.C. 454(a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term ''lawfully admitted for permanent residence'' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term ''national'' means a person owing permanent allegiance to a state.

(22) The term ''national of the United States'' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term ''naturalization'' means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) Repealed. Pub. L. 102–232, title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term ''noncombatant service'' shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term ''nonimmigrant visa'' means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term ''special immigrant'' means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 1997, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 1997, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of title 26) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979],

who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant.

(28) The term ''organization'' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term ''outlying possessions of the United States'' means American Samoa and Swains Island.

(30) The term ''passport'' means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country.

(31) The term ''permanent'' means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of

the United States or of the individual, in accordance with law.

(32) The term ''profession'' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term ''residence'' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term ''Service'' means the Immigration and Naturalization Service of the Department of Justice.

(35) The term ''spouse'', ''wife'', or ''husband'' do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term ''State'' includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(37) The term ''totalitarian party'' means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms ''totalitarian dictatorship'' and ''totalitarianism'' mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term ''United States'', except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(39) The term ''unmarried'', when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term ''world communism'' means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term ''graduates of a medical school'' means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term ''refugee'' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term ''refugee'' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(43) The term ''aggravated felony'' means—

(A) murder;

(B) illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

(E) an offense described in—

(i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (*o*), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or

(iii) section 5861 of title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

(H) an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);

(J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business; or

(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588,[1] of title 18 (relating to peonage, slavery, and involuntary servitude);

[1] So in original. The comma probably should not appear.

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18; or

(ii) section 421 of title 50 (relating to protecting the identity of undercover intelligence agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

(N) an offense described in section 1324(a)(1)[2] of this title (relating to alien smuggling) for the purpose of commercial advantage;

(O) an offense described in section 1546(a) of title 18 (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion[3] of such imprisonment) is at least 5 years;

(P) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and

(Q) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.

(44)(A) The term ''managerial capacity'' means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term ''executive capacity'' means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term ''substantial'' means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term ''extraordinary ability'' means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

(b) As used in subchapters I and II of this chapter—

(1) The term ''child'' means an unmarried person under twenty-one years of age who is—

(A) a legitimate child;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(F) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or

[2] See Codification note below.

[3] So in original. Probably should be ''suspension''.

loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(2) The terms ''parent'', ''father'', or ''mother'' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term ''parent'' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term ''person'' means an individual or an organization.

(4) The term ''special inquiry officer'' means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this chapter to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this chapter, as the Attorney General shall prescribe.

(5) The term ''adjacent islands'' includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III of this chapter—

(1) The term ''child'' means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431, 1432, and 1433 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms ''parent'', ''father'', and ''mother'' include in the case of a posthumous child a deceased parent, father, and mother.

(d) Repealed. Pub. L. 100–525, §9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

(e) For the purposes of this chapter—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was—

(1) a habitual drunkard;

(2) Repealed. Pub. L. 97–116, §2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether excludable or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section[4] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

(g) For the purposes of this chapter any alien ordered deported (whether before or after the en-

[4] So in original. The phrase ''of such section'' probably should not appear.

actment of this chapter) who has left the United States, shall be considered to have been deported in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term ''serious criminal offense'' means—

(1) any felony;

(2) any crime of violence, as defined in section 16 of title 18; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(June 27, 1952, ch. 477, title I, § 101, 66 Stat. 166; Sept. 11, 1957, Pub. L. 85–316, §§ 1, 2, 71 Stat. 639; July 7, 1958, Pub. L. 85–508, § 22, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86–3, § 20(a), 73 Stat. 13; Sept. 21, 1961, Pub. L. 87–256, § 109(a), (b), 75 Stat. 534; Sept. 26, 1961, Pub. L. 87–301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, Pub. L. 89–236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, Pub. L. 89–710, 80 Stat. 1104; Apr. 7, 1970, Pub. L. 91–225, § 1, 84 Stat. 116; Dec. 16, 1975, Pub. L. 94–155, 89 Stat. 824; Oct. 12, 1976, Pub. L. 94–484, title VI, § 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, Pub. L. 94–571, § 7(a), 90 Stat. 2706; Oct. 12, 1976, Pub. L. 94–484, title VI, § 602(c), as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(q)(3), 91 Stat. 395; Aug. 17, 1977, Pub. L. 95–105, title I, § 109(b)(3), 91 Stat. 847; Sept. 27, 1979, Pub. L. 96–70, title III, § 3201(a), 93 Stat. 496; Mar. 17, 1980, Pub. L. 96–212, title II, § 201(a), 94 Stat. 102; Dec. 29, 1981, Pub. L. 97–116, §§ 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Priv. L. 98–47, § 3, 98 Stat. 3435; Oct. 21, 1986, Pub. L. 99–505, § 1, 100 Stat. 1806; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub. L. 99–603, title III, §§ 301(a), 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, Pub. L. 99–653, §§ 2, 3, 100 Stat. 3655; Oct. 1, 1988, Pub. L. 100–459, title II, § 210(a), 102 Stat. 2203; Oct. 24, 1988, Pub. L. 100–525, §§ 2(*o*)(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7342, 102 Stat. 4469; Nov. 21, 1989, Pub. L. 101–162, title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, Pub. L. 101–238, § 3(a), 103 Stat. 2100; Feb. 16, 1990, Pub. L. 101–246, title I, § 131(b), 104 Stat. 31; Nov. 29, 1990, Pub. L. 101–649, title I, §§ 123, 151(a), 153(a), 162(f)(2)(A), title II, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), title IV, § 407(a)(2), title V, §§ 501(a), 509(a), title VI, § 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018–5020, 5022, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, Pub. L. 102–110, § 2(a), 105 Stat. 555; Dec. 12, 1991, Pub. L. 102–232, title II, §§ 203(a), 205(a)–(c), 206(b), (c)(1), (d), 207(b), title III, §§ 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), 105 Stat. 1737, 1740, 1741, 1746–1748, 1750, 1751, 1758; Apr. 30, 1994, Pub. L. 103–236, title I, § 162(h)(1), 108 Stat. 407; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(a), 108 Stat. 2024; Oct. 5, 1994, Pub. L. 103–337, div. C, title XXXVI, § 3605, 108 Stat. 3113; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320.)

References in Text

This chapter, referred to in subsecs. (a), (b)(1)(E), (F), (4), and (e)–(g), was in the original, ''this Act'', meaning act June 27, 1952, ch. 477, 66 Stat. 163, as amended, 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 below and Tables.

The Headquarters Agreement with the United Nations (61 Stat. 758), referred to in subsec. (a)(15)(C), is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (a)(15)(G)(i), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), referred to in subsec. (a)(19), was classified to section 303 of Title 50, Appendix, War and National Defense, and was omitted from the Code as obsolete.

The Selective Service Act of 1948, referred to in subsec. (a)(19), was redesignated the Universal Military Training and Service Act by act June 19, 1951, 65 Stat. 75, and then redesignated the Military Selective Service Act of 1967 by act June 30, 1967, Pub. L. 90–40, 81 Stat. 100, and subsequently redesignated the Military Selective Service Act by Pub. L. 92–129, title I, § 101(a)(1), Sept. 28, 1971, 85 Stat. 348.

Codification

Section 1324(a)(1) of this title, referred to in subsec. (a)(43)(N), was in the original ''section 274(a)(1) of title 18, United States Code'', which was translated as reading ''section 274(a)(1) of this Act'', meaning the Immigration and Nationality Act, to reflect the probable intent of Congress, because title 18 does not contain a section 274, and section 274(a)(1) of the Immigration and Nationality Act relates to criminal penalties for bringing in and harboring certain aliens.

Amendments

1994—Subsec. (a)(1). Pub. L. 103–236 substituted ''official designated by the Secretary of State pursuant to section 1104(b) of this title'' for ''Assistant Secretary of State for Consular Affairs''.

Subsec. (a)(15)(S). Pub. L. 103–322 added subpar. (S).

Subsec. (a)(27)(C)(ii)(II), (III). Pub. L. 103–416, § 214, substituted ''1997,'' for ''1994,''.

Subsec. (a)(27)(D). Pub. L. 103–416, § 201, inserted ''or of the American Institute in Taiwan,'' after ''Government abroad,'' and ''(or, in the case of the American Institute in Taiwan, the Director thereof)'' after ''Service establishment''.

Subsec. (a)(27)(F)(ii). Pub. L. 103–337 inserted ''or continues to be employed by the United States Government in an area of the former Canal Zone'' after ''employment''.

Subsec. (a)(27)(I)(iii)(II). Pub. L. 103–416, § 202, added subcl. (II) and struck out former subcl. (II) which read as follows: ''files a petition for status under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after October 24, 1988, whichever is later; or''.

Subsec. (a)(27)(J)(i). Pub. L. 103–416, § 219(a), substituted ''or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has'' for ''and has'' before ''been deemed''.

Subsec. (a)(43). Pub. L. 103–416, § 222(a), amended par. (43) generally. Prior to amendment, par. (43) read as follows: ''The term 'aggravated felony' means murder, any illicit trafficking in any controlled substance (as defined in section 802 of title 21), including any drug trafficking crime as defined in section 924(c)(2) of title 18, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, any offense described in section 1956 of title 18 (relating to laundering of monetary instruments), or any crime of

violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years, or any attempt or conspiracy to commit any such act. Such term applies to offenses described in the previous sentence whether in violation of Federal or State law and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years.''

1991—Subsec. (a)(15)(D)(i). Pub. L. 102–232, §309(b)(1), inserted a comma after ''States)''.

Subsec. (a)(15)(H)(i)(b). Pub. L. 102–232, §303(a)(7)(A), struck out '', and had approved by,'' after ''has filed with''.

Pub. L. 102–232, §303(a)(5)(A), inserted ''subject to section 1182(j)(2) of this title,'' after ''or (b)''.

Pub. L. 102–232, §207(b), inserted ''or as a fashion model'' after ''section 1184(i)(1) of this title'' and ''or, in the case of a fashion model, is of distinguished merit and ability'' after ''section 1184(i)(2) of this title''.

Subsec. (a)(15)(O)(i). Pub. L. 102–232, §205(b), struck out before semicolon at end '', but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States''.

Subsec. (a)(15)(O)(ii)(III)(b). Pub. L. 102–232, §205(c), substituted ''significant production (including pre- and post-production work)'' for ''significant principal photography''.

Subsec. (a)(15)(P)(i). Pub. L. 102–232, §203(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

''(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least 1 year and provides functions integral to the performance of the group, and

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

Subsec. (a)(15)(P)(ii)(II). Pub. L. 102–232, §206(b), (c)(1), inserted ''or organizations'' after ''and an organization'' and struck out before semicolon at end '', between the United States and the foreign states involved''.

Subsec. (a)(15)(P)(iii)(II). Pub. L. 102–232, §206(d), substituted ''to perform, teach, or coach'' for ''for the purpose of performing'' and inserted ''commercial or noncommercial'' before ''program''.

Subsec. (a)(15)(Q). Pub. L. 102–232, §303(a)(14), substituted ''approved'' for ''designated''.

Subsec. (a)(24). Pub. L. 102–232, §305(m)(1), struck out par. (24) which defined ''naturalization court''.

Subsec. (a)(27)(I)(ii)(II), (iii)(II). Pub. L. 102–232, §302(e)(8)(A), substituted ''files a petition for status'' for ''applies for a visa or adjustment of status''.

Subsec. (a)(27)(K). Pub. L. 102–110 added subpar. (K).

Subsec. (a)(43). Pub. L. 102–232, §306(a)(1), struck out comma before period at end of first sentence.

Subsec. (a)(46). Pub. L. 102–232, §205(a), added par. (46).

Subsec. (c)(1). Pub. L. 102–232, §309(b)(4), struck out reference to section 1434.

1990—Subsec. (a)(15)(D)(i). Pub. L. 101–649, §203(c), substituted ''a capacity'' for ''any capacity'' and inserted '', as defined in section 1288(a) of this title'' after ''on board a vessel''.

Subsec. (a)(15)(E)(i). Pub. L. 101–649, §204(a), inserted '', including trade in services or trade in technology'' after ''substantial trade''.

Subsec. (a)(15)(H). Pub. L. 101–649, §205(e)(1), struck out ''having a residence in a foreign country which he has no intention of abandoning'' after ''an alien''.

Subsec. (a)(15)(H)(i)(a). Pub. L. 101–649, §162(f)(2)(A), substituted ''for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or'' for ''for the facility for which the alien will perform the services, or''.

Subsec. (a)(15)(H)(i)(b). Pub. L. 101–649, §205(c)(1), substituted ''who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title, who meets the requirements for the occupation specified in section 1184(i)(2) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Secretary an application under section 1182(n)(1) of this title'' for ''who is of distinguished merit and ability and who is coming temporarily to the United States to perform services (other than services as a registered nurse) of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency''.

Subsec. (a)(15)(H)(ii). Pub. L. 101–649, §205(e)(2), (3), substituted ''(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States'' for ''who is coming temporarily to the United States (a)'', and in subcl. (b) inserted ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States'' after ''(b)''.

Subsec. (a)(15)(H)(iii). Pub. L. 101–649, §205(e)(4), inserted ''having a residence in a foreign country which he has no intention of abandoning'' after ''(iii)''.

Pub. L. 101–649, §205(d), inserted '', in a training program that is not designed primarily to provide productive employment'' before semicolon at end.

Subsec. (a)(15)(L). Pub. L. 101–649, §206(c), substituted ''within 3 years preceding'' for ''immediately preceding''.

Subsec. (a)(15)(O), (P). Pub. L. 101–649, §207(a), added subpars. (O) and (P).

Subsec. (a)(15)(Q). Pub. L. 101–649, §208, added subpar. (Q).

Subsec. (a)(15)(R). Pub. L. 101–649, §209(a), added subpar. (R).

Subsec. (a)(27)(C). Pub. L. 101–649, §151(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him;''.

Subsec. (a)(27)(J). Pub. L. 101–649, §153(a), added subpar. (J).

Subsec. (a)(36). Pub. L. 101–649, §407(a)(2), struck out ''(except as used in section 1421(a) of this title)'' after ''includes''.

Subsec. (a)(43). Pub. L. 101–649, §501(a)(6), inserted ''and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years'' after ''Federal or State law''.

Pub. L. 101–649, §501(a)(5), inserted at end ''Such term applies to offenses described in the previous sentence whether in violation of Federal or State law.''

Pub. L. 101–649, §501(a)(4), struck out ''committed within the United States'' after ''to commit any such act,''.

Pub. L. 101–649, § 501(a)(3), inserted ''any offense described in section 1956 of title 18 (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years,'' after ''section 921 of such title,''.

Pub. L. 101–649, § 501(a)(2), inserted ''any illicit trafficking in any controlled substance (as defined in section 802 of title 21), including'' after ''murder,''.

Pub. L. 101–649, § 501(a)(1), aligned margin of par. (43).

Subsec. (a)(44). Pub. L. 101–649, § 123, added par. (44).

Subsec. (a)(45). Pub. L. 101–649, § 204(c), added par. (45).

Subsec. (f)(3). Pub. L. 101–649, § 603(a)(1)(A), substituted ''paragraphs (2)(D), (6)(E), and (9)(A)'' for ''paragraphs (11), (12), and (31)''.

Pub. L. 101–649, § 603(a)(1)(B), substituted ''subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof'' for ''paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23)''.

Subsec. (f)(8). Pub. L. 101–649, § 509(a), substituted ''an aggravated felony (as defined in subsection (a)(43) of this section)'' for ''the crime of murder''.

Subsec. (h). Pub. L. 101–649, § 603(a)(1)(C), substituted ''1182(a)(2)(E) of this title'' for ''1182(a)(34) of this title''.

Pub. L. 101–246 added subsec. (h).

1989—Subsec. (a)(15)(H)(i). Pub. L. 101–238 added subcl. (a), designated existing provisions as subcl. (b), and inserted ''(other than services as a registered nurse)'' after ''to perform services''.

Subsec. (b)(2). Pub. L. 101–162 inserted before period at end '', except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term 'parent' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption''.

1988—Subsec. (a)(15)(J). Pub. L. 100–525, § 9(a)(1), substituted ''Director of the United States Information Agency'' for ''Secretary of State''.

Subsec. (a)(27)(I)(i)(II), (ii)(II), (iii)(II). Pub. L. 100–525, § 2(*o*)(1), substituted ''October 24, 1988'' for ''November 6, 1986'' and ''applies for a visa or adjustment of status'' for ''applies for admission''.

Subsec. (a)(38). Pub. L. 100–525, § 9(a)(2), struck out ''For the purpose of issuing certificates of citizenship to persons who are citizens of the United States, the term 'United States' as used in section 1452 of this title includes the Canal Zone.''

Subsec. (a)(43). Pub. L. 100–690 added par. (43).

Subsec. (b)(2). Pub. L. 100–459, temporarily inserted before period at end '', except that, for purposes of paragraph (1)(F) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term 'parent' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption''. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (c)(1). Pub. L. 100–525, § 8(b), repealed Pub. L. 99–653, § 3. See 1986 Amendment note below.

Subsec. (d). Pub. L. 100–525, § 9(a)(3), struck out subsec. (d) defining ''veteran'', ''Spanish-American War'', ''World War I'', ''World War II'', and ''Korean hostilities'' as those terms were used in part III of subchapter III of this chapter.

1986—Subsec. (a)(15)(D). Pub. L. 99–505 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15)(H). Pub. L. 99–603, § 301(a), designated existing provisions of cl. (ii) as subcl. (b) and added subcl. (a) relating to persons performing agricultural labor or services as defined by the Secretary of Labor in regulations and including agricultural labor as defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29 of a temporary or seasonal nature.

Subsec. (a)(15)(H)(ii). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (a)(15)(N). Pub. L. 99–603, § 312(b), added subpar. (N).

Subsec. (a)(27)(I). Pub. L. 99–603, § 312(a), added subpar. (I).

Subsec. (b)(1)(D). Pub. L. 99–603, § 315(a), inserted ''or to its natural father if the father has or had a bona fide parent-child relationship with the person''.

Subsec. (b)(1)(E). Pub. L. 99–653, § 2, struck out ''thereafter'' after ''the child has''.

Subsec. (c)(1). Pub. L. 99–653, § 3, which struck out par. (1) defining ''child'', was repealed by Pub. L. 100–525, § 8(b), and such par. (1) was revived as of Nov. 14, 1986, see Repeal and Revival note below.

1984—Subsec. (a)(9). Priv. L. 98–47 struck out provisions which directed that in Canal Zone and outlying possessions of the United States ''consular officer'' meant an officer designated by the Governor of the Canal Zone, or the governors of the outlying possessions for purposes of issuing immigrant or nonimmigrant visas under this chapter.

1981—Subsec. (a)(15)(F). Pub. L. 97–116, §§ 2(a)(1), 18(a)(1), substituted in cl. (i) ''college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program'' for ''institution of learning or other recognized place of study'', and ''Secretary of Education'' for ''Office of Education of the United States''.

Subsec. (a)(15)(H), (J), (K), (L). Pub. L. 97–116, § 18(a)(2), substituted a semicolon for a period at end of subpars. (H), (J), (K), and (L) and inserted ''or'' at end of subpar. (L).

Subsec. (a)(15)(M). Pub. L. 97–116, § 2(a)(2), added subpar. (M).

Subsec. (a)(27)(H). Pub. L. 97–116, § 5(d)(1), added subpar. (H).

Subsec. (a)(33). Pub. L. 97–116, § 18(a)(3), struck out provision that residence be considered continuous for the purposes of sections 1482 and 1484 of this title where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

Subsec. (b)(1)(A), (B). Pub. L. 97–116, § 18(a)(5)(A), struck out ''or'' at the end.

Subsec. (b)(1)(C). Pub. L. 97–116, § 18(a)(5)(B), substituted a semicolon for the period at end.

Subsec. (b)(1)(E). Pub. L. 97–116, §§ 2(b), 18(a)(5)(C), substituted ''sixteen'' for ''fourteen'', and ''; or'' for the period at the end.

Subsec. (b)(1)(F). Pub. L. 97–116, § 2(b), substituted ''sixteen'' for ''fourteen''.

Subsec. (f). Pub. L. 97–116, § 2(c), struck out par. (2) which provided that a person not be considered a person of good moral character if within the period for which good moral character is required to be established the person commits adultery, and substituted in par. (3) ''paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana)'' for ''paragraphs (9), (10), and (23) of section 1182(a) of this title''.

1980—Subsec. (a)(42). Pub. L. 96–212 added par. (42).

1979—Subsec. (a)(27)(E) to (G). Pub. L. 96–70 added subpars. (E) to (G).

1977—Subsec. (a)(1). Pub. L. 95–105 substituted ''Assistant Secretary of State for Consular Affairs'' for ''administrator of the Bureau of Security and Consular Affairs of the Department of State''.

Subsec. (a)(41). Pub. L. 95–83 inserted ''a'' after ''graduates of'' and '', other than such aliens who are of national or international renown in the field of medicine'' after ''in a foreign state''.

1976—Subsec. (a)(15)(H)(i). Pub. L. 94–484, § 601(b)(1), inserted '', and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is com-

ing pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency''.

Subsec. (a)(15)(H)(ii). Pub. L. 94–484, §601(b)(2), inserted '', but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession''.

Subsec. (a)(15)(H)(iii). Pub. L. 94–484, §601(b)(3), inserted '', other than to receive graduate medical education or training''.

Subsec. (a)(15)(J). Pub. L. 94–484, §601(b)(4), inserted ''and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title''.

Subsec. (a)(27). Pub. L. 94–571 struck out subpar. (A) provision defining term ''special immigrant'' to include an immigrant born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him and restricting issuance of an immigrant visa until consular officer was in receipt of a determination made by the Secretary of Labor pursuant to former provisions of section 1182(a)(14) of this title; and redesignated as subpars. (A) to (D) former subpars. (B) to (E).

Subsec. (a)(41). Pub. L. 94–484, §601(e), added par. (41).

1975—Subsec. (b)(1)(F). Pub. L. 94–155 provided for adoption of alien children under the age of fourteen by unmarried United States citizens who are at least twenty-five years of age and inserted requirement that before adoption the Attorney General be satisfied that proper care will be provided the child after admission.

1970—Subsec. (a)(15)(H). Pub. L. 91–225, §1(a), provided for nonimmigrant alien status for alien spouse and minor children of any alien specified in par. (H) if accompanying him or following to join him and struck out ''temporary'', ''other'', and ''industrial'' before ''services'', ''temporary services'', and ''trainee'' in cls. (i) to (iii), respectively.

Subsec. (a)(15)(K), (L). Pub. L. 91–225, §1(b), added subpars. (K) and (L).

1966—Subsec. (a)(38). Pub. L. 89–710 inserted sentence providing that term ''United States'' as used in section 1452 of this title, for the purpose of issuing certificates of citizenship to persons who are citizens of the United States, shall include the Canal Zone.

1965—Subsec. (a)(27). Pub. L. 89–236, §8(a), substituted ''special immigrant'' for ''nonquota immigrant'' as term being defined.

Subsec. (a)(32). Pub. L. 89–236, §8(b), substituted term ''profession'' and its definition for term ''quota immigrant'' and its definition.

Subsec. (b)(1)(F). Pub. L. 89–236, §8(c), expanded definition to include a child, under the age of 14 at the time a petition is filed in his behalf to accord a classification as an immediate relative or who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption, and made minor amendments in the existing definition.

Subsec. (b)(6). Pub. L. 89–236, §24, struck out par. (6) which defined term ''eligible orphan''.

1961—Subsec. (a)(15). Pub. L. 87–256 included the alien spouse and minor children of any such alien if accompanying him or following to join him in subpar. (F), and added subpar. (J).

Subsec. (b)(1)(F). Pub. L. 87–301, §2, added subpar. (F).

Subsec. (b)(6). Pub. L. 87–301, §1, added par. (6).

Subsec. (d)(1). Pub. L. 87–301, §7(a), inserted ''or from June 25, 1950, to July 1, 1955,''.

Subsec. (d)(2). Pub. L. 87–301, §7(b), inserted definition of ''Korean hostilities''.

1959—Subsec. (a)(36). Pub. L. 86–3 struck out reference to Hawaii.

1958—Subsec. (a)(36). Pub. L. 85–508 struck out reference to Alaska.

1957—Subsec. (b)(1). Pub. L. 85–316 inserted ''whether or not born out of wedlock'' in subpar. (B), and added subpars. (D) and (E).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(dd) of Pub. L. 103–416 provided that: ''Except as otherwise specifically provided in this section, the amendments made by this section [amending this section and sections 1151, 1153, 1154, 1160, 1182, 1188, 1251, 1252, 1252b, 1254a, 1255, 1255a, 1256, 1288, 1302, 1322, 1323, 1324a, 1324b, 1324c, 1330, 1356, 1421, 1424, 1444, 1449, and 1522 of this title, repealing section 1161 of this title, amending provisions set out as notes under this section and sections 1182, 1254a, 1255, 1255a, and 1356 of this title, and repealing provisions set out as a note under section 1288 of this title] shall be effective as if included in the enactment of the Immigration Act of 1990 [Pub. L. 101–649].''

Section 222(b) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section] shall apply to convictions entered on or after the date of enactment of this Act [Oct. 25, 1994].''

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 208 of title II of Pub. L. 102–232 provided that: ''The provisions of, and amendments made by, this title [amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title] shall take effect on April 1, 1992.''

Section 302(e)(8) of Pub. L. 102–232 provided that the amendments made by that section [amending this section and sections 1186a and 1201 of this title] are effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 102–649.

Section 305(m) of Pub. L. 102–232 provided that the amendments made by that section [amending this section and sections 1423, 1433, 1441, 1443, 1445, and 1452 of this title] are effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

Section 310 of Pub. L. 102–232, as amended by Pub. L. 103–416, title II, §219(z)(9), Oct. 25, 1994, 108 Stat. 4318, provided that: ''Except as otherwise specifically provided, the amendments made by (and provisions of)—

''(1) sections 302 through 308 [amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1357, 1421, 1423, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1251, 1252, 1254a, and 1255 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] shall take effect as if included in the enactment of the Immigration Act of 1990 [Pub. L. 101–649], and

''(2) section 309(b) [amending this section and sections 1154, 1160, 1182, 1188, 1252, 1252a, 1324a, 1356, 1424, and 1455 of this title and enacting provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1991].''

Section 2(d) of Pub. L. 102–110 provided that: ''This section [amending this section and sections 1153 and 1255 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 1, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 161 of title I of Pub. L. 101–649, as amended by Pub. L. 102–110, §4, Oct. 1, 1991, 105 Stat. 557; Pub. L. 102–232, title III, §302(e)(1), (2), Dec. 12, 1991, 105 Stat. 1745; Pub. L. 103–416, title II, §§218, 219(aa), Oct. 25, 1994, 108 Stat. 4316, 4319, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this

title [enacting section 1186b of this title, amending this section, sections 1103, 1151 to 1154, 1157, 1159, 1182, 1251, 1254, 1255, and 1325 of this title, section 3304 of Title 26, Internal Revenue Code, and section 1382c of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1152, 1153, 1159, 1182, 1201, and 1251 of this title, and amending provisions set out as notes under section 1255 of this title] shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

''(b) PROVISIONS TAKING EFFECT UPON ENACTMENT.—The following sections (and amendments made by such sections) shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and (unless otherwise provided) apply to fiscal year 1991:

''(1) Section 103 [enacting provisions set out as a note under section 1152 of this title] (relating to per country limitation for Hong Kong).

''(2) Section 104 [amending sections 1157 and 1159 of this title and enacting provisions set out as notes under section 1159 of this title] (relating to asylee adjustments).

''(3) Section 124 [enacting provisions set out as a note under section 1153 of this title] (relating to transition for employees of certain U.S. businesses in Hong Kong).

''(4) Section 133 [enacting provisions set out as a note under section 1153 of this title] (relating to one-year diversity transition for aliens who have been notified of availability of NP–5 visas).

''(5) Section 134 [enacting provisions set out as a note under section 1153 of this title] (relating to transition for displaced Tibetans).

''(6) Section 153 [amending this section and section 1251 of this title and enacting provisions set out as a note under section 1251 of this title] (relating to special immigrants who are dependent on a juvenile court).

''(7) Section 154 [enacting provisions set out as a note under section 1201 of this title] (permitting extension of validity of visas for certain residents of Hong Kong).

''(8) Section 155 [enacting provisions set out as a note under section 1153 of this title] (relating to expedited issuance of Lebanese second and fifth preference visas).

''(9) Section 162(b) [amending section 1154 of this title] (relating to immigrant visa petitioning process), but only insofar as such section relates to visas for fiscal years beginning with fiscal year 1992.

''(c) GENERAL TRANSITIONS.—

''(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act [8 U.S.C. 1154(a)] before October 1, 1991, for preference status under section 203(a)(3) or section 203(a)(6) of such Act [8 U.S.C. 1153(a)(3), (6)] (as in effect before such date)—

''(A) in order to maintain the priority date with respect to such a petition, the petitioner must file (by not later than October 1, 1993) a new petition for classification of the employment under paragraph (1), (2), or (3) of section 203(b) of such Act (as amended by this title), and

''(B) any labor certification under section 212(a)(5)(A) of such Act required with respect to the new petition shall be deemed approved if the labor certification with respect to the previous petition was previously approved under section 212(a)(14) of such Act.

In the case of a petition filed under section 204(a) of such Act before October 1, 1991, but which is not described in paragraph (4), and for which a filing fee was paid, any additional filing fee shall not exceed one-half of the fee for the filing of the new petition referred to in subparagraph (A).

''(2) Any petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(4) or section 203(a)(5) of such Act (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(3) or section 203(a)(4), respectively, of such Act (as amended by this title).

''(3) In the case of an alien who is described in section 203(a)(8) of the Immigration and Nationality Act (as in effect before October 1, 1991) as the spouse or child of an alien admitted for permanent residence as a preference immigrant under section 203(a)(3) or 203(a)(6) of such Act (as in effect before such date) and who would be entitled to enter the United States under such section 203(a)(8) but for the amendments made by this title [see subsec. (a) above], such an alien shall be deemed to be described in section 203(d) of such Act as the spouse or child an an alien described in section 203(b)(2) or 203(b)(3)(A)(i), respectively, of such Act with the same priority date as that of the principal alien.

''(4)(A) Subject to subparagraph (B), any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Immigration and Nationality Act (as in effect before such date) shall be deemed, on and after October 1, 1991 (or, if later, the date of such approval), to be a petition approved to accord status under section 203(b)(2) or under the appropriate classification under section 203(b)(3), respectively, of such Act (as in effect on and after such date). Nothing in this subparagraph shall be construed as exempting the beneficiaries of such petitions from the numerical limitations under section 203(b)(2) or 203(b)(3) of such Act.

''(B) Subparagraph (A) shall not apply more than two years after the date the priority date for issuance of a visa on the basis of such a petition has been reached.

''(d) ADMISSIBILITY STANDARDS.—When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1991, makes application for admission, the immigrant's admissibility under paragraph (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(7)(A)] shall be determined under the provisions of law in effect on the date of the issuance of such visa.

''(e) CONSTRUCTION.—Nothing in this title [see subsec. (a) above] shall be construed as affecting the provisions of section 19 of Public Law 97–116 [8 U.S.C. 1151 note], section 2(c)(1) of Public Law 97–271 [8 U.S.C. 1255 note], or section 202(e) of Public Law 99–603 [8 U.S.C. 1255a note].''

[Section 219(aa) of Pub. L. 103–416 provided that the amendment made by that section to section 161(c)(3) of Pub. L. 101–649, set out above, is effective as if included in section 4 of Pub. L. 102–110, see below.]

[Section 4 of Pub. L. 102–110 provided that the amendment made by that section, adding pars. (3) and (4) to section 161(c) of Pub. L. 101–649, set out above, is effective as if included in the Immigration Act of 1990, Pub. L. 101–649.]

Section 162(f)(3) of Pub. L. 101–649 provided that: ''The amendments made by this subsection [amending this section, section 1182 of this title, and provisions set out as a note under section 1255 of this title] shall apply as though included in the enactment of the Immigration Nursing Relief Act of 1989 [Pub. L. 101–238].''

Section 203(d) of Pub. L. 101–649 provided that: ''The amendments made by this section [enacting section 1288 of this title and amending this section and section 1281 of this title] shall apply to services performed on or after 180 days after the date of the enactment of this Act [Nov. 29, 1990].''

Section 231 of title II of Pub. L. 101–649 provided that: ''Except as otherwise provided in this title, this title, and the amendments made by this title [enacting section 1288 of this title, amending this section and sections 1182, 1184, 1187, 1281, and 1323 of this title, and enacting provisions set out as notes under this section and sections 1182, 1184, 1187, and 1288 of this title], shall take effect on October 1, 1991, except that sections 222 and 223 [enacting provisions set out as notes under this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

Amendment by section 407(a)(2) of Pub. L. 101–649 effective Nov. 29, 1990, with general savings provisions, see section 408(a)(3), (d) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment; Savings Provisions note under section 1421 of this title.

Section 501(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to offenses committed on or after the date of the enactment of this Act [Nov. 29, 1990], except that the amendments made by paragraphs (2) and (5) of subsection (a) shall be effective as if included in the enactment of section 7342 of the Anti-Drug Abuse Act of 1988 [Pub. L. 100–690].''

Section 509(b) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §306(a)(7), Dec. 12, 1991, 105 Stat. 1751, 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] and shall apply to convictions occurring on or after such date, except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction.''

Section 601(e) of Pub. L. 101–649 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending section 1182 of this title] and by section 603(a) of this Act [amending this section and sections 1102, 1153, 1157, 1159, 1160, 1161, 1181, 1183, 1201, 1224, 1225, 1226, 1254a, 1255a, 1259, 1322, and 1327 of this title, repealing section 2691 of Title 22, Foreign Relations and Intercourse, amending provisions set out as notes under this section and sections 1255 and 1255a of this title, and repealing provisions set out as notes under section 1182 of this title] shall apply to individuals entering the United States on or after June 1, 1991.

''(2) The amendments made by paragraphs (5) and (13) of section 603(a) [amending sections 1160 and 1255a of this title] shall apply to applications for adjustment of status made on or after June 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–238 applicable to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after Dec. 18, 1989, see section 3(d) of Pub. L. 101–238, set out as a note under section 1182 of this title.

Section 611(b) of Pub. L. 101–162 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, upon the expiration of the similar amendment made by section 210(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100–459, 102 Stat. 2203).''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Section 2(s) of Pub. L. 100–525 provided that: ''The amendments made by this section [amending this section, sections 1160, 1161, 1184, 1186, 1187, 1188, 1251, 1254, 1255, 1255a, 1259, 1324, 1324a, 1324b, and 1357 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, and section 1091 of Title 20, Education, amending provisions set out as notes under this section and sections 1188 and 1255a of this title and section 1802 of Title 29, Labor, and repealing provisions set out as a note under section 1255a of this title] shall be effective as if they were included in the enactment of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603].''

Section 309(b)(15) of Pub. L. 102–232 provided that: ''The amendments made by section 8 of the Immigration Technical Corrections Act of 1988 [Pub. L. 100–525, amending this section, sections 1152, 1182, 1201 to 1202, 1301, 1302, 1304, 1356, 1409, 1431 to 1433, 1452, 1481, and 1483 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, sections 1153, 1201, 1401, 1409, 1451, and 1481 of this title, and section 4195 of Title 22, and amending provisions set out as notes under this section and section 1153 of this title] shall be effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986 (Public Law 99–653).''

Section 210(b) of Pub. L. 100–459 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 315 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603] and shall expire on October 1, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 23(a) of Pub. L. 99–653, as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2618, provided that: ''The amendments made by sections 2, 4, and 7 [amending this section and sections 1152, 1182, 1228, 1251, and 1356 of this title] apply to visas issued, and admissions occurring, on or after November 14, 1986.''

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

EFFECTIVE DATE OF 1981 AMENDMENT

Section 21 of Pub. L. 97–116 provided that:

''(a) Except as provided in subsection (b) and in section 5(c) [set out as a note under section 1182 of this title], the amendments made by this Act [see Short Title of 1981 Amendment note below] shall take effect on the date of the enactment of this Act [Dec. 29, 1981].

''(b)(1) The amendments made by section 2(a) [amending this section] shall apply on and after the first day of the sixth month beginning after the date of the enactment of this Act [Dec. 29, 1981].

''(2) The amendment made by section 16 [amending section 1455 of this title] shall apply to fiscal years beginning on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 204(a)–(c) of title II of Pub. L. 96–212 provided that:

''(a) Except as provided in subsections (b) and (c), this title and the amendments made by this title [enacting sections 1157, 1158, and 1159 of this title, amending this section and sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, enacting provisions set out as notes under sections 1153, 1157, 1158, 1182, and 1521 of this title, and amending provisions set out as a note under sections 1182 and 1255 of this title] shall take effect on the date of the enactment of this Act [Mar. 17, 1980], and shall apply to fiscal years beginning with the fiscal year beginning October 1, 1979.

''(b)(1)(A) Section 207(c) of the Immigration and Nationality Act (as added by section 201(b) of this Act) [section 1157(c) of this title] and the amendments made by subsections (b), (c), and (d) of section 203 of this Act [amending sections 1152, 1153, 1182, and 1254 of this title] shall take effect on April 1, 1980.

''(B) The amendments made by section 203(f) [amending section 1182 of this title] shall apply to aliens paroled into the United States on or after the sixtieth day after the date of the enactment of this Act [Mar. 17, 1980].

''(C) The amendments made by section 203(i) [amending section 1153 of this title and provisions set out as notes under section 1255 of this title] shall take effect immediately before April 1, 1980.

''(2) Notwithstanding sections 207(a) and 209(b) of the Immigration and Nationality Act (as added by section 201(b) of this Act) [sections 1157(a) and 1159(b) of this title], the fifty thousand and five thousand numerical limitations specified in such respective sections shall, for fiscal year 1980, be equal to 25,000 and 2,500, respectively.

''(3) Notwithstanding any other provision of law, for fiscal year 1980—

''(A) the fiscal year numerical limitation specified in section 201(a) of the Immigration and Nationality

Act [section 1151(a) of this title] shall be equal to 280,000, and

''(B) for the purpose of determining the number of immigrant visa and adjustments of status which may be made available under sections 203(a)(2) and 202(e)(2) of such Act [sections 1153(a)(2) and 1152(e)(2) of this title], the granting of a conditional entry or adjustment of status under section 203(a)(7) or 202(e)(7) of such Act after September 30, 1979, and before April 1, 1980, shall be considered to be the granting of an immigrant visa under section 203(a)(2) or 202(e)(2), respectively, of such Act during such period.

''(c)(1) The repeal of subsections (g) and (h) of section 203 of the Immigration and Nationality Act, made by section 203(c)(8) of this title [section 1153(g) and (h) of this title], shall not apply with respect to any individual who before April 1, 1980, was granted a conditional entry under section 203(a)(7) of the Immigration and Nationality Act (and under section 202(e)(7) of such Act [section 1152(e)(7) of this title], if applicable), as in effect immediately before such date, and it shall not apply to any alien paroled into the United States before April 1, 1980, who is eligible for the benefits of section 5 of Public Law 95–412 [set out as a note under section 1182 of this title].

''(2) An alien who, before April 1, 1980, established a date of registration at an immigration office in a foreign country on the basis of entitlement to a conditional entrant status under section 203(a)(7) of the Immigration and Nationality Act (as in effect before such date) [section 1153(a)(7) of this title], shall be deemed to be entitled to refugee status under section 207 of such Act (as added by section 201(b) of this title) [section 1157 of this title] and shall be accorded the date of registration previously established by that alien. Nothing in this paragraph shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of such Act.

''(3) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) if section 212(a) of the Immigration and Nationality Act [section 1182(a)(14), (15), (20), (21), (25), and (32) of this title] shall not be applicable to any alien who has entered the United States before April 1, 1980, pursuant to section 203(a)(7) of such Act [section 1153(a)(7) of this title] or who has been paroled as a refugee into the United States under section 212(d)(5) of such Act, and who is seeking adjustment of status, and the Attorney General may waive any other provision of section 212(a) of such Act (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3201(d)(1) of Pub. L. 96–70 provided that: ''The amendments made by this section [amending this section and section 1182 of this title] shall take effect on the date of the enactment of this Act [Sept. 27, 1979].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 602(d) of Pub. L. 94–484, as added Pub. L. 95–83, title III, § 307(q)(3), Aug. 1, 1977, 91 Stat. 395, provided that: ''This section [amending this section and enacting provisions set out as a note under section 1182 of this title] and the amendment made by subsection (c) [amending this section] are effective January 10, 1977, and the amendments made by subsections (b)(4) and (d) of section 601 [amending this section and section 1182 of this title] shall apply only on and after January 10, 1978, notwithstanding subsection (f) of such section [set out as an Effective Date of 1976 Amendments note under section 1182 of this title].''

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 10 of Pub. L. 94–571 provided that: ''The foregoing provisions of this Act, including the amendments made by such provisions [see Short Title of 1976 Amendment note below], shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act [Oct. 20, 1976].''

Amendment by section 601(b)(4) of Pub. L. 94–484 applicable only on and after Jan. 10, 1978, notwithstanding section 601(f) of Pub. L. 94–484, see section 602(d) of Pub. L. 94–484, as added by section 307(q)(3) of Pub. L. 95–83, set out as an Effective Date of 1977 Amendment note above.

Amendment by Pub. L. 94–484 effective ninety days after Oct. 12, 1976, see section 601(f) of Pub. L. 94–484, set out as a note under section 1182 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

Section 407 of act June 27, 1952, provided that: ''Except as provided in subsection (k) of section 401 [former section 1106(k) of this title], this Act [this chapter] shall take effect at 12:01 ante meridian United States Eastern Standard Time on the one hundred eightieth day immediately following the date of its enactment [June 27, 1952].''

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103–416 provided that: ''This Act [see Tables for classification] may be cited as the 'Immigration and Nationality Technical Corrections Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENTS

Section 1(a) of Pub. L. 102–232 provided that: ''This Act [amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441, 1443, 1445 to 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1184, 1251, 1252, 1254a, 1255, 1356, and 1421 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] may be cited as the 'Miscellaneous and Technical Immigration and Naturalization Amendments of 1991'.''

Section 101 of title I of Pub. L. 102–232 provided that: ''This title [amending sections 1421, 1448, 1450, and 1455 of this title and enacting provisions set out as a note under section 1421 of this title] may be cited as the 'Judicial Naturalization Ceremonies Amendments of 1991'.''

Section 201 of title II of Pub. L. 102–232 provided that: ''This title [amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title] may be cited as the 'O and P Nonimmigrant Amendments of 1991'.''

Section 301(a) of title III of Pub. L. 102–232 provided that: ''This title [amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1251, 1252, 1254a, 1255, and 1356 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] may be cited as the 'Immigration Technical Corrections Act of 1991'.''

Section 1 of Pub. L. 102–110 provided that: ''This Act [amending this section and sections 1153, 1255, and 1524 of this title and enacting and amending provisions set

out as notes under this section] may be cited as the 'Armed Forces Immigration Adjustment Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENTS

Section 1(a) of Pub. L. 101–649 provided that: ''This Act [see Tables for classification] may be cited as the 'Immigration Act of 1990'.''

Pub. L. 101–249, §1, Mar. 6, 1990, 104 Stat. 94, provided that: ''This Act [enacting section 1440–1 of this title] may be cited as the 'Posthumous Citizenship for Active Duty Service Act of 1989'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–238 provided that: ''This Act [amending this section and sections 1160 and 1182 of this title, enacting provisions set out as notes under sections 1182, 1255, 1255a, and 1324a of this title, and amending provisions set out as a note under section 1255a of this title] may be cited as the 'Immigration Nursing Relief Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–658, §1, Nov. 15, 1988, 102 Stat. 3908, provided that: ''This Act [enacting provisions set out as notes under this section and section 1153 of this title and amending provisions set out as a note under section 1153 of this title] may be cited as the 'Immigration Amendments of 1988'.''

Section 1(a) of Pub. L. 100–525 provided that: ''This Act [amending this section, sections 1102, 1103, 1104, 1105a, 1152, 1154, 1157, 1160, 1161, 1182, 1184, 1186, 1186a, 1187, 1188, 1201, 1201a, 1202, 1222, 1223, 1224, 1227, 1251, 1252, 1254, 1255, 1255a, 1255b, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1441, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1481, 1483, 1489, 1522, 1523, and 1524 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 1153, 1182, 1201, 1227, 1254, 1255, 1356, 1401, 1409, 1451, 1481, and 1522 of this title and section 4195 of Title 22, amending provisions set out as notes under this section and sections 1153, 1182, 1188, and 1255a of this title and section 1802 of Title 29, Labor, and repealing provisions set out as a note under section 1255a of this title] may be cited as the 'Immigration Technical Corrections Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENTS

Section 1(a) of Pub. L. 99–653, as amended by Pub. L. 100–525, §8(a)(1), Oct. 24, 1988, 102 Stat. 2617, provided that: ''this Act [amending this section, sections 1152, 1182, 1201, 1202, 1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431 to 1433, 1451, 1452, 1481, and 1483 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, and repealing section 1201a of this title and provisions set out as notes under section 1153 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1986'.''

Pub. L. 99–639, §1, Nov. 10, 1986, 100 Stat. 3537, provided that: ''This Act [enacting section 1186a of this title, amending sections 1154, 1182, 1184, 1251, 1255, and 1325 of this title, and enacting provisions set out as notes under sections 1154, 1182, 1184, and 1255 of this title] may be cited as the 'Immigration Marriage Fraud Amendments of 1986'.''

Pub. L. 99–605, §1(a), Nov. 6, 1986, 100 Stat. 3449, provided that: ''This Act [amending sections 1522 to 1524 of this title and enacting provisions set out as notes under section 1522 of this title] may be cited as the 'Refugee Assistance Extension Act of 1986'.''

Section 1(a) of Pub. L. 99–603 provided that: ''This Act [enacting sections 1160, 1161, 1186, 1187, 1255a, 1324a, 1324b, 1364, and 1365 of this title and section 1437r of Title 42, The Public Health and Welfare, amending this section, sections 1152, 1184, 1251, 1252, 1254, 1255, 1258, 1259, 1321, 1324, and 1357 of this title, section 2025 of Title 7, Agriculture, section 1546 of Title 18, Crimes and Criminal Procedure, sections 1091 and 1096 of Title 20, Education, sections 1802, 1813, and 1851 of Title 29, Labor, and sections 303, 502, 602, 603, 672, 673, 1203, 1320b–7, 1353, 1396b, and 1436a of Title 42, repealing section 1816 of Title 29, enacting provisions set out as notes under this section and sections 1152, 1153, 1160, 1186, 1187, 1253, 1255a, 1259, 1324a, and 1324b of this title, section 1802 of Title 29, and sections 405, 502, and 1320b–7 of Title 42, and amending provisions set out as notes under this section and section 1383 of Title 42] may be cited as the 'Immigration Reform and Control Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–363, §1, Oct. 25, 1982, 96 Stat. 1734, provided that: ''This Act [amending sections 1522, 1523, and 1524 of this title and enacting provisions set out as a note under section 1522 of this title] may be cited as the 'Refugee Assistance Amendments of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Section 1(a) of Pub. L. 97–116 provided that: ''this Act [amending this section, sections 1105a, 1151, 1152, 1154, 1182, 1201, 1203, 1221, 1227, 1251, 1252, 1253, 1254, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431, 1432, 1433, 1439, 1440, 1445, 1446, 1447, 1448, 1452, 1455, 1481, and 1483 of this title, and section 1429 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and sections 1151 and 1182 of this title, amending a provision set out as a note under this section, and repealing a provision set out as a note under section 1182 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1981'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–212 provided: ''That this Act [enacting sections 1157 to 1159 and 1521 to 1525 of this title, amending this section, sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and section 2601 of Title 22, Foreign Relations and Intercourse, enacting provision set out as notes under this section and sections 1153, 1157, 1158, 1521, and 1522 of this title, amending provisions set out as notes under sections 1182 and 1255 of this title, and repealing provisions set out as a note under section 2601 of Title 22] may be cited as the 'Refugee Act of 1980'.''

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94–571 provided: ''That this Act [amending this section and sections 1151, 1152 to 1154, 1181, 1182, 1251, 1254, and 1255 of this title and enacting provisions set out as notes under this section and sections 1153 and 1255 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1976'.''

SHORT TITLE

Section 1 of act June 27, 1952, provided that such act, enacting this chapter, section 1429 of Title 18, Crimes and Criminal Procedure, amending sections 1353a, 1353d, 1552 of this title, sections 342b, 342c, 342e of former Title 5, Executive Departments and Government Officers and Employees, sections 1114, 1546 of Title 18, sections 618, 1446 of Title 22, Foreign Relations and Intercourse, sections 1, 177 of former Title 49, Transportation, sections 1952 to 1955 and 1961 of Title 50 App., War and National Defense, repealing section 530 of former Title 31, Money and Finance, enacting provisions set out as notes under this section and amending provisions set out as notes under sections 1435 and 1440 of this title, may be cited as the ''Immigration and Nationality Act''.

REPEAL AND REVIVAL

Section 8(b) of Pub. L. 100–525 provided that: ''Section 3 of INAA [Pub. L. 99–653, repealing subsec. (c)(1) of this section] is repealed and the language stricken by such section is revived as of November 14, 1986.''

REPEALS

Section 403(b) of act June 27, 1952, provided that: ''Except as otherwise provided in section 405 [set out

below], all other laws, or parts of laws, in conflict or inconsistent with this Act [this chapter] are, to the extent of such conflict or inconsistency, repealed.''

REGULATIONS

Section 303(a)(8) of Pub. L. 102–232 provided that: ''The Secretary of Labor shall issue final or interim final regulations to implement the changes made by this section to section 101(a)(15)(H)(i)(b) and section 212(n) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n)] no later than January 2, 1992.''

Pub. L. 102–140, title VI, § 610, Oct. 28, 1991, 105 Stat. 832, as amended by Pub. L. 103–416, title II, § 219(*l*)(2), Oct. 25, 1994, 108 Stat. 4317, provided that:

''(a) The Attorney General shall prescribe regulations under title 5, United States Code, to carry out section 404(b)(1) of the Immigration and Nationality Act [act June 27, 1952, as amended, set out as a note above], including a delineation of (1) scenarios that constitute an immigration emergency, (2) the process by which the President declares an immigration emergency, (3) the role of the Governor and local officials in requesting a declaration of emergency, (4) a definition of 'assistance as required by the Attorney General', and (5) the process by which States and localities are to be reimbursed.

''(b) The Attorney General shall prescribe regulations under title 5, United States Code, to carry out section 404(b)(2) of such Act, including providing a definition of the terms in section 404(b)(2)(A)(ii) and a delineation of 'in any other circumstances' in section 404(b)(2)(A)(iii) of such Act.

''(c) The regulations under this section shall be published for comment not later than 30 days after the date of enactment of this Act [Oct. 28, 1991] and issued in final form not later than 15 days after the end of the comment period.''

SAVINGS CLAUSE

Section 405 of act June 27, 1952, provided in part that:

''(a) Nothing contained in this Act [this chapter], unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act [this chapter] shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal done or existing, at the time this Act [this chapter] shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act [this chapter] are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act [this chapter], makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended [former section 155 of this title], or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended [former section 1953 of Appendix to Title 50], which is pending on the date of enactment of this Act [June 27, 1952], shall be regarded as a proceeding within the meaning of this subsection.

''(b) Except as otherwise specifically provided in title III [subchapter III of this chapter], any petition for naturalization heretofore filed which may be pending at the time this Act [this chapter] shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

''(c) Except as otherwise specifically provided in this Act [this chapter], the repeal of any statute by this Act [this chapter] shall not terminate nationality heretofore lawfully acquired nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

''(d) Except as otherwise specifically provided in this Act [this chapter], or any amendment thereto, fees, charges and prices for purposes specified in title V of the Independent Offices Appropriation Act, 1952 (Public Law 137, Eighty-second Congress, approved August 31, 1951), may be fixed and established in the manner and by the head of any Federal Agency as specified in that Act.

''(e) This Act [this chapter] shall not be construed to repeal, alter, or amend section 231(a) of the Act of April 30, 1946 (60 Stat. 148; [section 1281(a) of title 22]), the Act of June 20, 1949 (Public Law 110, section 8, Eighty-first Congress, first session; 63 Stat. 208 [section 403h of title 50]), the Act of June 5, 1950 (Public Law 535, Eighty-first Congress, second session [former section 1501 et seq. of title 22]), nor title V of the Agricultural Act of 1949, as amended (Public Law 78, Eighty-second Congress, first session [former sections 1461 to 1468 of title 7]).''

SEPARABILITY

Section 406 of act June 27, 1952, provided that: ''If any particular provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby.''

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85–508 as dependent on admission of State of Alaska into the Union, see section 8(b) of Pub. L. 85–508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

ADMISSION OF HAWAII AS STATE

Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 25, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding former section 491 of Title 48, Territories and Insular Possessions.

APPROPRIATIONS

Section 404 of act June 27, 1952, as amended by acts Dec. 29, 1981, Pub. L. 97–116, § 18(s), 95 Stat. 1621; Nov. 6, 1986, Pub. L. 99–603, title I, § 113, 100 Stat. 3383; Nov. 29, 1990, Pub. L. 101–649, title VII, § 705(a), 104 Stat. 5087; Dec. 12, 1991, Pub. L. 102–232, title III, § 308(d), 105 Stat. 1757, provided that:

''(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [this chapter] (other than chapter 2 of title IV) [subchapter IV of this chapter].

''(b)(1) There are authorized to be appropriated (for fiscal year 1991 and any subsequent fiscal year) to an immigration emergency fund, to be established in the Treasury, an amount sufficient to provide for a balance of $35,000,000 in such fund, to be used to carry out paragraph (2) and to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

''(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available,

by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities whenever—

''(i) a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter,

''(ii) the lives, property, safety, or welfare of the residents of a State or locality are endangered, or

''(iii) in any other circumstances as determined by the Attorney General.

In applying clause (i), the providing of parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

''(B) Not more than $20,000,000 shall be made available for all localities under this paragraph.

''(C) For purposes of subparagraph (A), the requirement of paragraph (1) that an immigration emergency be determined shall not apply.

''(D) A decision with respect to an application for reimbursement under subparagraph (A) shall be made by the Attorney General within 15 days after the date of receipt of the application.''

[Section 705(b) of Pub. L. 101–649 provided that: ''Section 404(b)(2)(A)(i) of the Immigration and Nationality Act [act June 27, 1952, set out above], as added by the amendment made by subsection (a)(5), shall apply with respect to increases in the number of asylum applications filed in a calendar quarter beginning on or after January 1, 1989. The Attorney General may not spend any amounts from the immigration emergency fund pursuant to the amendments made by subsection (a) [amending section 404 of act June 27, 1952, set out above] before October 1, 1991.'']

DEFINITIONS; APPLICABILITY OF SECTION 1101(a) AND (b) OF THIS TITLE

Section 14 of Pub. L. 85–316 provided that: ''Except as otherwise specifically provided in this Act, the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act [8 U.S.C. 1101(a), (b)] shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act [enacting sections 1182b, 1182c, 1201a, 1205, 1251a, 1255a, and 1255b of this title and provisions set out as notes under section 1153 of this title and section 1971a of the Appendix to Title 50, War and National Defense.]''

ADDITIONAL DEFINITIONS

Many of the terms listed in this section are similarly defined in section 782 of Title 50, War and National Defense.

PHILIPPINE TRADERS AS NONIMMIGRANTS

Philippine traders classifiable as nonimmigrants under subsec. (a)(15)(E) of this section, see section 1184a of this title.

IMPROVING BORDER CONTROLS

Section 130006 of Pub. L. 103–322 provided that:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Immigration and Naturalization Service to increase the resources for the Border Patrol, the Inspections Program, and the Deportation Branch to apprehend illegal aliens who attempt clandestine entry into the United States or entry into the United States with fraudulent documents or who remain in the country after their nonimmigrant visas expire—

''(1) $228,000,000 for fiscal year 1995;

''(2) $185,000,000 for fiscal year 1996;

''(3) $204,000,000 for fiscal year 1997; and

''(4) $58,000,000 for fiscal year 1998.

''Of the sums authorized in this section, all necessary funds shall, subject to the availability of appropriations, be allocated to increase the number of agent positions (and necessary support personnel positions) in the Border Patrol by not less than 1,000 full-time equivalent positions in each of fiscal years 1995, 1996, 1997, and 1998 beyond the number funded as of October 1, 1994.

''(b) REPORT.—By September 30, 1996 and September 30, 1998, the Attorney General shall report to the Congress on the programs described in this section. The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].''

VISAS FOR OFFICIALS OF TAIWAN

Section 221 of Pub. L. 103–416 provided that: ''Whenever the President of Taiwan or any other high-level official of Taiwan shall apply to visit the United States for the purposes of discussions with United States Federal or State government officials concerning—

''(1) trade or business with Taiwan that will reduce the United States-Taiwan trade deficit;

''(2) prevention of nuclear proliferation;

''(3) threats to the national security of the United States;

''(4) the protection of the global environment;

''(5) the protection of endangered species; or

''(6) regional humanitarian disasters.

The official shall be admitted to the United States, unless the official is otherwise excludable under the immigration laws of the United States.''

CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS

Section 225 of Pub. L. 103–416 provided that: ''No amendment made by this Act [see Tables for classification] and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) 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.''

REPORT ON ADMISSION OF CERTAIN NONIMMIGRANTS

Section 202(b) of Pub. L. 102–232 provided that:

''(1) By not later than October 1, 1994, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and of the House of Representatives a report containing information relating to the admission of artists, entertainers, athletes, and related support personnel as nonimmigrants under subparagraphs (O) and (P) of section 101(a)(15) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(O), (P)], and information on the laws, regulations, and practices in effect in other countries that affect United States citizens and permanent resident aliens in the arts, entertainment, and athletics, in order to evaluate the impact of such admissions, laws, regulations, and practices on such citizens and aliens.

''(2) Not later than 30 days after the date the Committee of the Judiciary on the Senate receives the report under paragraph (1), the Chairman of the Committee shall make the report available to interested parties and shall hold a hearing respecting the report. No later than 90 days after the date of receipt of the report, such Committee shall report to the Senate its findings and any legislation it deems appropriate.''

DELAY UNTIL APRIL 1, 1992, IN IMPLEMENTATION OF PROVISIONS RELATING TO NONIMMIGRANT ARTISTS, ATHLETES, ENTERTAINERS, AND FASHION MODELS

Section 3 of Pub. L. 102–110 provided that: ''Section 214(g)(1)(C) of the Immigration and Nationality Act [8 U.S.C. 1184(g)(1)(C)] shall not apply to the issuance of visas or provision of status before April 1, 1992. Aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models (or for the purpose of accompanying or assisting in an artistic or athletic performance) before April 1, 1992, shall not be admitted under subparagraph (O)(i), (O)(ii), (P)(i), or (P)(iii) of

section 101(a)(15) of such Act [8 U.S.C. 1101(a)(15)], but may be admitted under the terms of subparagraph (H)(i)(b) of such section (as in effect on September 30, 1991).''

COMMISSION ON IMMIGRATION REFORM

Section 141 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(c)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

''(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) Effective October 1, 1991, there is established a Commission on Immigration Reform (in this section referred to as the 'Commission') which shall be composed of 9 members to be appointed as follows:

''(A) One member who shall serve as Chairman, to be appointed by the President.

''(B) Two members to be appointed by the Speaker of the House of Representatives who shall select such members from a list of nominees provided by the Chairman of the Committee on the Judiciary of the House of Representatives.

''(C) Two members to be appointed by the Minority Leader of the House of Representatives who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

''(D) Two members to be appointed by the Majority Leader of the Senate who shall select such members from a list of nominees provided by the Chairman of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

''(E) Two members to be appointed by the Minority Leader of the Senate who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

''(2) Initial appointments to the Commission shall be made during the 45-day period beginning on October 1, 1991. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

''(3) Members shall be appointed to serve for the life of the Commission, except that the term of the member described in paragraph (1)(A) shall expire at noon on January 20, 1993, and the President shall appoint an individual to serve for the remaining life of the Commission.

''(b) FUNCTIONS OF COMMISSION.—The Commission shall—

''(1) review and evaluate the impact of this Act and the amendments made by this Act [see Tables for classification], in accordance with subsection (c); and

''(2) transmit to the Congress—

''(A) not later than September 30, 1994, a first report describing the progress made in carrying out paragraph (1), and

''(B) not later than September 30, 1997, a final report setting forth the Commission's findings and recommendations, including such recommendations for additional changes that should be made with respect to legal immigration into the United States as the Commission deems appropriate.

''(c) CONSIDERATIONS.—

''(1) PARTICULAR CONSIDERATIONS.—In particular, the Commission shall consider the following:

''(A) The requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members and the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.

''(B) The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States.

''(C) The social, demographic, and natural resources impact of immigration.

''(D) The impact of immigration on the foreign policy and national security interests of the United States.

''(E) The impact of per country immigration levels on family-sponsored immigration.

''(F) The impact of the numerical limitation on the adjustment of status of aliens granted asylum.

''(G) The impact of the numerical limitations on the admission of nonimmigrants under section 214(g) of the Immigration and Nationality Act [8 U.S.C. 1184(g)].

''(2) DIVERSITY PROGRAM.—The Commission shall analyze the information maintained under section 203(c)(3) of the Immigration and Nationality Act [8 U.S.C. 1153(c)(3)] and shall report to Congress in its report under subsection (b)(2) on—

''(A) the characteristics of individuals admitted under section 203(c) of the Immigration and Nationality Act, and

''(B) how such characteristics compare to the characteristics of family-sponsored immigrants and employment-based immigrants.

The Commission shall include in the report an assessment of the effect of the requirement of paragraph (2) of section 203(c) of the Immigration and Nationality Act on the diversity, educational, and skill level of aliens admitted.

''(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, pay at the daily equivalent of the minimum annual rate of basic pay in effect for grade GS–18 of the General Schedule. Each member of the Commission who is such an officer or employee shall serve without additional pay.

''(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

''(e) MEETINGS, STAFF, AND AUTHORITY OF COMMISSION.—The provisions of subsections (e) through (g) of section 304 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out as a note under section 1160 of this title] shall apply to the Commission in the same manner as they apply to the Commission established under such section, except that paragraph (2) of subsection (e) thereof shall not apply.

''(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

''(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

''(g) TERMINATION DATE.—The Commission shall terminate on the date on which a final report is required to be transmitted under subsection (b)(2)(B), except that the Commission may continue to function until January 1, 1998, for the purpose of concluding its activities, including providing testimony to standing committees of Congress concerning its final report under this section and disseminating that report.

''(h) CONGRESSIONAL RESPONSE.—(1) No later than 90 days after the date of receipt of each report transmitted under subsection (b)(2), the Committees on the Judiciary of the House of Representatives and of the Senate shall initiate hearings to consider the findings and recommendations of the report.

''(2) No later than 180 days after the date of receipt of such a report, each such Committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

''(i) PRESIDENTIAL REPORT.—The President shall conduct a review and evaluation and provide for the transmittal of reports to the Congress in the same manner

as the Commission is required to conduct a review and evaluation and to transmit reports under subsection (b).''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

SPECIAL IMMIGRANT STATUS FOR CERTAIN ALIENS EMPLOYED AT UNITED STATES MISSION IN HONG KONG (D SPECIAL IMMIGRANTS)

Section 152 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §302(d)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

''(a) IN GENERAL.—Subject to subsection (c), an alien described in subsection (b) shall be treated as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(27)(D)].

''(b) ALIENS COVERED.—An alien is described in this subsection if—

''(1) the alien is—

''(A) an employee at the United States consulate in Hong Kong under the authority of the Chief of Mission (including employment pursuant to section 5913 of title 5, United States Code) and has performed faithful service as such an employee for a total of three years or more, or

''(B) a member of the immediate family (as defined in 6 Foreign Affairs Manual 117k as of the date of the enactment of this Act [Nov. 29, 1990]) of an employee described in subparagraph (A) who has been living with the employee in the same household;

''(2) the welfare of the employee or such an immediate family member is subject to a clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

''(3) the principal officer in Hong Kong, in the officer's discretion, has recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

''(c) EXPIRATION.—Subsection (a) shall only apply to aliens who file an application for special immigrant status under this section by not later than January 1, 2002.

''(d) LIMITED WAIVER OF NUMERICAL LIMITATIONS.—The first 500 visas made available to aliens as special immigrants under this section shall not be counted against any numerical limitation established under section 201 or 202 of the Immigration and Nationality Act [8 U.S.C. 1151 or 1152].''

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Amendment by section 203(c) of Pub. L. 101–649 not to affect performance of longshore work in United States by citizens or nationals of United States, see section 203(a)(2) of Pub. L. 101–649, set out as a note under section 1288 of this title.

APPLICATION OF TREATY TRADER FOR CERTAIN FOREIGN STATES

Section 204(b) of Pub. L. 101–649 provided that: ''Each of the following foreign states shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(E)], to be a foreign state described in such section if the foreign state extends reciprocal nonimmigrant treatment to nationals of the United States:

''(1) The largest foreign state in each region (as defined in section 203(c)(1) of the Immigration and Nationality Act [8 U.S.C. 1153(c)(1)]) which (A) has 1 or more dependent areas (as determined for purposes of section 202 of such Act [8 U.S.C. 1152]) and (B) does not have a treaty of commerce and navigation with the United States.

''(2) The foreign state which (A) was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out as a note under section 1153 of this title] and (B) does not have a treaty of commerce and navigation with the United States, but (C) had such a treaty with the United States before 1925.''

CLARIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING FIRMS

Section 206(a) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §303(a)(9), Dec. 12, 1991, 105 Stat. 1748, provided that: ''In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(L), 1153(b)(1)(C)] and section 124(a)(3)(A) of this Act [set out as a note under section 1153 of this title], in the case of a partnership that is organized in the United States to provide accounting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.''

ADMISSION OF NONIMMIGRANTS FOR COOPERATIVE RESEARCH, DEVELOPMENT, AND COPRODUCTION PROJECTS

Section 222 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §303(b)(3), Dec. 12, 1991, 105 Stat. 1748, provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who—

''(1) has a residence in a foreign country which the alien has no intention of abandoning, and

''(2) is coming to the United States, upon a basis of reciprocity, to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense, but not to exceed a period of more than 10 years,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

''(b) NUMERICAL LIMITATION.—The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section at any time may not exceed 100.''

ESTABLISHMENT OF SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM

Section 223 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §303(b)(4), Dec. 12, 1991, 105 Stat. 1748, provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who—

''(1) has a residence in a foreign country which the alien has no intention of abandoning, and

''(2) is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in a special education training program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

''(b) NUMERICAL LIMITATION.—The number of aliens who may be admitted as (or otherwise be provided the

status of) a nonimmigrant under this section in any fiscal year may not exceed 50.''

EXTENSION OF H–1 IMMIGRATION STATUS FOR CERTAIN NONIMMIGRANTS EMPLOYED IN COOPERATIVE RESEARCH AND DEVELOPMENT PROJECTS AND COPRODUCTION PROJECTS

Pub. L. 101–189, div. A, title IX, § 937, Nov. 29, 1989, 103 Stat. 1538, provided that: ''The Attorney General shall provide for the extension through December 31, 1991, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) for an alien to perform temporarily services relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense in the case of an alien who has had such status for a period of at least five years if such status has not expired as of the date of the enactment of this Act [Nov. 29, 1989] but would otherwise expire during 1989, 1990, or 1991, due only to the time limitations with respect to such status.''

EXTENSION OF H–1 STATUS FOR CERTAIN REGISTERED NURSES THROUGH DECEMBER 31, 1989

Pub. L. 100–658, § 4, Nov. 15, 1988, 102 Stat. 3909, provided that: ''The Attorney General shall provide for the extension through December 31, 1989, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)] for an alien to perform temporarily services as a registered nurse in the case of an alien who has had such status for a period of at least 5 years if—

''(1) such status has not expired as of the date of the enactment of this Act [Nov. 15, 1988] but would otherwise expire during 1988 or 1989, due only to the time limitation with respect to such status; or

''(2)(A) the alien's status as such a nonimmigrant expired during the period beginning on January 1, 1987, and ending on the date of the enactment of this Act, due only to the time limitation with respect to such status,

''(B) the alien is present in the United States as of the date of the enactment of this Act,

''(C) the alien has been employed as a registered nurse in the United States since the date of expiration of such status, and

''(D) in the case of an alien whose status expired during 1987, the alien's employer has filed with the Immigration and Naturalization Service, before the date of the enactment of this Act, an appeal of a petition filed in connection with the alien's application for extension of such status.''

RESIDENCE WITHIN UNITED STATES CONTINUED DURING PERIOD OF ABSENCE

Section 2(*o*)(2) of Pub. L. 100–525 provided that: ''Only for purposes of section 101(a)(27)(I) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(27)(I)], an alien who is or was an officer or employee of an international organization (or is the unmarried son or daughter or surviving spouse of such an officer or employee or former officer or employee) is considered to be residing and physically present in the United States during a period in which the alien is residing in the United States but is absent from the United States because of the officer's or employee's need to conduct official business on behalf of the organization or because of customary leave, but only if during the period of the absence the officer or employee continues to have a duty station in the United States and, in the case of such an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States.''

NONIMMIGRANT TRADERS AND INVESTORS UNDER UNITED STATES-CANADA FREE-TRADE AGREEMENT

For provisions allowing Canadian citizens to be classifiable as nonimmigrants under subsec. (a)(15)(E) of this section upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, see section 307(a) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

AMERASIAN IMMIGRATION

Pub. L. 100–461, title II, Oct. 1, 1988, 102 Stat. 2268–15, as amended by Pub. L. 101–167, title II, Nov. 21, 1989, 103 Stat. 1211; Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 228; Pub. L. 101–513, title II, Nov. 5, 1990, 104 Stat. 1996, provided: ''That the provisions of subsection (c) of section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as contained in section 101(e) of Public Law 100–202 [set out below], shall apply to an individual who (1) departs from Vietnam after the date of the enactment of this Act [Oct. 1, 1988], and (2) is described in subsection (b) of such section, but who is issued an immigrant visa under section 201(b) or 203(a) of the Immigration and Nationality Act [8 U.S.C. 1151(b), 1153(a)] (rather than under subsection (a) of such section), or would be described in subsection (b) of such section if such section also applied to principal aliens who were citizens of the United States (rather than merely to aliens)''.

Pub. L. 100–202, § 101(e) [title V, § 584], Dec. 22, 1987, 101 Stat. 1329–183, as amended by Pub. L. 101–167, title II, Nov. 21, 1989, 103 Stat. 1211; Pub. L. 101–513, title II, Nov. 5, 1990, 104 Stat. 1996; Pub. L. 101–649, title VI, § 603(a)(20), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 102–232, title III, § 307(*l*)(8), Dec. 12, 1991, 105 Stat. 1757, provided that:

''(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the Attorney General may admit aliens described in subsection (b) to the United States as immigrants if—

''(A) they are admissible (except as otherwise provided in paragraph (2)) as immigrants, and

''(B) they are issued an immigrant visa and depart from Vietnam on or after March 22, 1988.

''(2) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), and (7)(A)] shall not be applicable to any alien seeking admission to the United States under this section, and the Attorney General on the recommendation of a consular officer may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation by a consular officer.

''(3) Notwithstanding section 221(c) of the Immigration and Nationality Act [8 U.S.C. 1201(c)], immigrant visas issued to aliens under this section shall be valid for a period of one year.

''(b)(1) An alien described in this section is an alien who, as of the date of the enactment of this Act [Dec. 22, 1987], is residing in Vietnam and who establishes to the satisfaction of a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview, that the alien—

''(A)(i) was born in Vietnam after January 1, 1962, and before January 1, 1976, and (ii) was fathered by a citizen of the United States (such an alien in this section referred to as a 'principal alien');

''(B) is the spouse or child of a principal alien and is accompanying, or following to join, the principal alien; or

''(C) subject to paragraph (2), either (i) is the principal alien's natural mother (or is the spouse or child of such mother), or (ii) has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien.

''(2) An immigrant visa may not be issued to an alien under paragraph (1)(C) unless the officer referred to in paragraph (1) has determined, in the officer's discretion, that (A) such an alien has a bona fide relationship

with the principal alien similar to that which exists between close family members and (B) the admission of such an alien is necessary for humanitarian purposes or to assure family unity. If an alien described in paragraph (1)(C)(ii) is admitted to the United States, the natural mother of the principal alien involved shall not, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by virtue of such parentage.

''(3) For purposes of this section, the term 'child' has the meaning given such term in section 101(b)(1)(A), (B), (C), (D), and (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A)–(E)].

''(c) Any alien admitted (or awaiting admission) to the United States under this section shall be eligible for benefits under chapter 2 of title IV of the Immigration and Nationality Act [8 U.S.C. 1521 et seq.] to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act [8 U.S.C. 1157] are eligible for benefits under such chapter.

''(d) The Attorney General, in cooperation with the Secretary of State, shall report to Congress 1 year, 2 years, and 3 years, after the date of the enactment of this Act [Dec. 22, 1987] on the implementation of this section. Each such report shall include the number of aliens who are issued immigrant visas and who are admitted to the United States under this section and number of waivers granted under subsection (a)(2) and the reasons for granting such waivers.

''(e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section and nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.''

[Section 307(*l*)(8) of Pub. L. 102–232 provided that the amendment made by that section to section 101(e) [title V, §584(a)(2)] of Pub. L. 100–202, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

[Pub. L. 101–513, title II, Nov. 5, 1990, 104 Stat. 1996, provided that the amendment made by Pub. L. 101–513 to Pub. L. 100–202, §101(e) [title V, §584(b)(2)], set out above, is effective Dec. 22, 1987.]

AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF IMMIGRATION AND NATURALIZATION SERVICE

Section 111 of Pub. L. 99–603 provided that:

''(a) TWO ESSENTIAL ELEMENTS.—It is the sense of Congress that two essential elements of the program of immigration control established by this Act [see Short Title of 1986 Amendments note above] are—

''(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

''(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act [this chapter].

''(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS AND EOIR.—In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice—

''(1) for the Immigration and Naturalization Service, for fiscal year 1987, $422,000,000, and for fiscal year 1988, $419,000,000; and

''(2) for the Executive Office of Immigration Review, for fiscal year 1987, $12,000,000, and for fiscal year 1988, $15,000,000.

Of the amounts authorized to be appropriated under paragraph (1) sufficient funds shall be available to provide for an increase in the border patrol personnel of the Immigration and Naturalization Service so that the average level of such personnel in each of fiscal years 1987 and 1988 is at least 50 percent higher than such level for fiscal year 1986.

''(c) USE OF FUNDS FOR IMPROVED SERVICES.—Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service. Such enhanced community outreach may include the establishment of appropriate local community taskforces to improve the working relationship between the Service and local community groups and organizations (including employers and organizations representing minorities).

''(d) SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR WAGE AND HOUR ENFORCEMENT.—There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department in order to deter the employment of unauthorized aliens and remove the economic incentive for employers to exploit and use such aliens.''

ELIGIBILITY OF H–2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE

Section 305 of Pub. L. 99–603 provided that: ''A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted.''

DENIAL OF CREW MEMBER NONIMMIGRANT VISA IN CASE OF STRIKES

Section 315(d) of Pub. L. 99–603 provided that:

''(1) Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act [Nov. 6, 1986], an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

''(2) Paragraph (1) shall not apply to an alien employee who was employed before the date of the strike concerned and who is seeking admission to enter the United States to continue to perform services as a crewman to the same extent and on the same routes as the alien performed such services before the date of the strike.''

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 407 of Pub. L. 99–603 provided that: ''It is the sense of the Congress that the President of the United States should consult with the President of the Repub-

lic of Mexico within 90 days after enactment of this Act [Nov. 6, 1986] regarding the implementation of this Act [see Short Title of 1986 Amendments note above] and its possible effect on the United States or Mexico. After the consultation, it is the sense of the Congress that the President should report to the Congress any legislative or administrative changes that may be necessary as a result of the consultation and the enactment of this legislation.''

COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Section 601 of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(r), Oct. 24, 1988, 102 Stat. 2614, provided that:

''(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission for the Study of International Migration and Cooperative Economic Development (in this section referred to as the 'Commission'), to be composed of twelve members—

''(A) three members to be appointed by Speaker of the House of Representatives;

''(B) three members to be appointed by the minority leader of the House of Representatives;

''(C) three members to be appointed by the Majority Leader of the Senate; and

''(D) three members to be appointed by the Minority Leader of the Senate.

''(2) Members shall be appointed for the life of the Commission. Appointments to the Commission shall be made within 90 days after the date of the enactment of this Act [Nov. 6, 1986]. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(3) A majority of the members of the Commission shall elect a Chairman.

''(b) DUTY OF COMMISSION.—The Commission, in consultation with the governments of Mexico and other sending countries in the Western Hemisphere, shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and mutually beneficial, reciprocal trade and investment programs to alleviate such conditions. For purposes of this section, the term 'sending country' means a foreign country a substantial number of whose nationals migrate to, or remain in, the United States without authorization.

''(c) REPORT TO THE PRESIDENT AND CONGRESS.—Not later than three years after the appointment of the members of the Commission, the Commission shall prepare and transmit to the President and to the Congress a report describing the results of the Commission's examination and recommending steps to provide mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to unauthorized migration to the United States.

''(d) COMPENSATION OF MEMBERS, MEETINGS, STAFF, AUTHORITY OF COMMISSION, AND AUTHORIZATION OF APPROPRIATIONS.—(1) The provisions of subsections (d), (e)(3), (f), (g), and (h) of section 304 [8 U.S.C. 1160 note] shall apply to the Commission in the same manner as they apply to the Commission established under section 304. Not more than 1 percent of the amounts appropriated for the Commission may be used, at the sole discretion of the Chairman, for official entertainment.

''(2) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

''(e) TERMINATION DATE.—The Commission shall terminate on the date on which a report is required to be transmitted by subsection (c), except that the Commission may continue to function for not more than thirty days thereafter for the purpose of concluding its activities.''

TREATMENT OF DEPARTURES FROM GUAM

Section 2 of Pub. L. 99–505 provided that: ''In the administration of section 101(a)(15)(D)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(D)(ii)] (added by the amendment made by section 1 of this Act), an alien crewman shall be considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam.''

ALIEN EMPLOYEES OF AMERICAN UNIVERSITY OF BEIRUT

Priv. L. 98–53, Oct. 30, 1984, 98 Stat. 3437, provided: ''That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act [Oct. 30, 1984]) in which the alien is employed by the American University of Beirut.''

STUDY AND EVALUATION OF EXCHANGE PROGRAMS FOR GRADUATE MEDICAL EDUCATION OF ALIEN GRADUATES OF FOREIGN MEDICAL SCHOOLS; REPORT TO CONGRESS NOT LATER THAN JANUARY 15, 1983

Section 5(e) of Pub. L. 97–116 provided that: ''The Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency, shall evaluate the effectiveness and value to foreign nations and to the United States of exchange programs for the graduate medical education or training of aliens who are graduates of foreign medical schools, and shall report to Congress, not later than January 15, 1983, on such evaluation and include in such report such recommendations for changes in legislation and regulations as may be appropriate.''

ADJUSTMENT OF STATUS OF NONIMMIGRANT ALIENS RESIDING IN THE VIRGIN ISLANDS TO PERMANENT RESIDENT ALIEN STATUS

Upon application during the one-year period beginning Sept. 30, 1982, by an alien who was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker under subsec. (a)(15)(H)(ii) of this section or as a spouse or minor child of such worker, and has resided continuously in the Virgin Islands since June 30, 1975, the Attorney General may adjust the status of such nonimmigrant alien to that of an alien lawfully admitted for permanent residence, provided certain conditions are met, and such alien is not to be deported for failure to maintain nonimmigrant status until final action is taken on the alien's application for adjustment, see section 2(a), (b) of Pub. L. 97–271, set out as a note under section 1255 of this title.

LIMITATION ON ADMISSION OF ALIENS SEEKING EMPLOYMENT IN THE VIRGIN ISLANDS

Notwithstanding any other provision of law, the Attorney General not to be authorized, on or after Sept. 30, 1982, to approve any petition filed under section 1184(c) of this title in the case of importing any alien as a nonimmigrant under subsec. (a)(15)(H)(ii) of this section for employment in the Virgin Islands of the United States other than as an entertainer or as an athlete and for a period not exceeding 45 days, see section 3 of Pub. L. 97–271, set out as a note under section 1255 of this title.

LIMITATION ON ADMISSION OF SPECIAL IMMIGRANTS

Section 3201(c) of Pub. L. 96–70 provided that notwithstanding any other provision of law, not more than 15,000 individuals could be admitted to the United States as special immigrants under subparagraphs (E), (F), and (G) of subsec. (a)(27) of this section, of which not more than 5,000 could be admitted in any fiscal year, prior to repeal by Pub. L. 103–416, title II, § 212(a), Oct. 25, 1994, 108 Stat. 4314.

EX. ORD. NO. 12711. POLICY IMPLEMENTATION WITH RESPECT TO NATIONALS OF PEOPLE'S REPUBLIC OF CHINA

Ex. Ord. No. 12711, Apr. 11, 1990, 55 F.R. 13897, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, the Attorney General and the Secretary of State are hereby ordered to exercise their authority, including that under the Immigration and Nationality Act (8 U.S.C. 1101–1557), as follows:

SECTION 1. The Attorney General is directed to take any steps necessary to defer until January 1, 1994, the enforced departure of all nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of this order (hereinafter ''such PRC nationals'').

SEC. 2. The Secretary of State and the Attorney General are directed to take all steps necessary with respect to such PRC nationals (a) to waive through January 1, 1994, the requirement of a valid passport and (b) to process and provide necessary documents, both within the United States and at U.S. consulates overseas, to facilitate travel across the borders of other nations and reentry into the United States in the same status such PRC nationals had upon departure.

SEC. 3. The Secretary of State and the Attorney General are directed to provide the following protections:

(a) irrevocable waiver of the 2-year home country residence requirement that may be exercised until January 1, 1994, for such PRC nationals;

(b) maintenance of lawful status for purposes of adjustment of status or change of nonimmigrant status for such PRC nationals who were in lawful status at any time on or after June 5, 1989, up to and including the date of this order;

(c) authorization for employment of such PRC nationals through January 1, 1994; and

(d) notice of expiration of nonimmigrant status (if applicable) rather than the institution of deportation proceedings, and explanation of options available for such PRC nationals eligible for deferral of enforced departure whose nonimmigrant status has expired.

SEC. 4. The Secretary of State and the Attorney General are directed to provide for enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization, as implemented by the Attorney General's regulation effective January 29, 1990.

SEC. 5. The Attorney General is directed to ensure that the Immigration and Naturalization Service finalizes and makes public its position on the issue of training for individuals in F–1 visa status and on the issue of reinstatement into lawful nonimmigrant status of such PRC nationals who have withdrawn their applications for asylum.

SEC. 6. The Departments of Justice and State are directed to consider other steps to assist such PRC nationals in their efforts to utilize the protections that I have extended pursuant to this order.

SEC. 7. This order shall be effective immediately.

GEORGE BUSH.

CROSS REFERENCES

Definition of the terms—

Alien enemies, see section 21 of Title 50, War and National Defense.

Crew list visa, see section 1201 of this title.

Order of deportation, see section 1252 of this title.

Permits to enter, see section 1185 of this title.

Person, see sections 1185 and 1322 of this title.

Religious training and belief, see section 1448 of this title.

Transportation line and transportation company, see section 1228 of this title.

United States, see section 1185 of this title.

Immigration and Naturalization Service, see section 1551 et seq. of this title.

Peace Corps programs, nonimmigrant status of foreign participants, see section 2508 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1160, 1181, 1182, 1184, 1184a, 1186, 1187, 1201, 1251, 1252a, 1254, 1254a, 1255, 1255a, 1255b, 1257, 1258, 1281, 1282, 1288, 1303, 1356, 1365, 1433 of this title; title 2 section 441e; title 7 section 2015; title 10 sections 1060a, 2864; title 18 sections 831, 1091, 1203, 2331, 3077, 3142; title 19 sections 58c, 3401; title 22 sections 1474, 2128, 2395, 2508, 3508, 5001; title 26 sections 871, 872, 1441, 3121, 3231, 3306, 7701; title 29 sections 1506, 1802; title 42 sections 408, 410, 1436a; title 45 sections 231, 351; title 46 section 2101; title 50 sections 424, 1801; title 50 App. sections 453, 456.

§ 1102. Diplomatic and semidiplomatic immunities

Except as otherwise provided in this chapter, for so long as they continue in the nonimmigrant classes enumerated in this section, the provisions of this chapter relating to ineligibility to receive visas and the exclusion or deportation of aliens shall not be construed to apply to nonimmigrants—

(1) within the class described in paragraph (15)(A)(i) of section 1101(a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15)(A)(i), and, under such rules and regulations as the President may deem to be necessary, the provisions of subparagraphs (A) through (C) of section 1182(a)(3) of this title;

(2) within the class described in paragraph (15)(G)(i) of section 1101(a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15)(G)(i), and the provisions of subparagraphs (A) through (C) of section 1182(a)(3) of this title; and

(3) within the classes described in paragraphs (15)(A)(ii), (15)(G)(ii), (15)(G)(iii), or (15)(G)(iv) of section 1101(a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs, and the provisions of subparagraphs (A) through (C) of section 1182(a)(3) of this title.

(June 27, 1952, ch. 477, title I, § 102, 66 Stat. 173; Oct. 24, 1988, Pub. L. 100–525, § 9(b), 102 Stat. 2619; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(2), 104 Stat. 5082; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(i), 105 Stat. 1756.)

AMENDMENTS

1991—Pars. (1) to (3). Pub. L. 102–232 substituted ''subparagraphs (A) through (C) of section 1182(a)(3) of this title'' for ''paragraph (3) (other than subparagraph (E)) of section 1182(a) of this title''.

1990—Pars. (1) to (3). Pub. L. 101–649 substituted ''(3) (other than subparagraph (E))'' for ''(27)'' in pars. (1) and (2), and ''paragraph (3) (other than subparagraph (E))'' for ''paragraphs (27) and (29)'' in par. (3).

1988—Par. (2). Pub. L. 100–525 substituted ''documentation'' for ''documentaion''.

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 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.

DENIAL OF VISAS TO CERTAIN REPRESENTATIVES TO UNITED NATIONS

Pub. L. 101–246, title IV, § 407, Feb. 16, 1990, 104 Stat. 67, provided that:

''(a) IN GENERAL.—The President shall use his authority, including the authorities contained in section 6 of the United Nations Headquarters Agreement Act (Public Law 80–357) [Aug. 4, 1947, ch. 482, set out as a note under 22 U.S.C. 287], to deny any individual's admission to the United States as a representative to the United Nations if the President determines that such individual has been found to have been engaged in espionage activities directed against the United States or its allies and may pose a threat to United States national security interests.

''(b) WAIVER.—The President may waive the provisions of subsection (a) if the President determines, and so notifies the Congress, that such a waiver is in the national security interests of the United States.''

CROSS REFERENCES

All cases affecting ambassadors, other public ministers and consuls—

Judicial power as extending to, see Const. Art. III, § 2, cl. 1.

Supreme Court as having original jurisdiction in, see Const. Art. III, § 2, cl. 2.

Definition of alien, immigrant visa, nonimmigrant alien, nonimmigrant visa, and passport, see section 1101 of this title.

International organizations, privileges, exemptions, and immunities of officers, employees, and their families, see section 288d of Title 22, Foreign Relations and Intercourse.

Original and exclusive jurisdiction of district courts of all actions and proceedings against consuls or vice consuls of foreign states, see section 1351 of Title 28, Judiciary and Judicial Procedure.

Original but not exclusive jurisdiction of Supreme Court of all actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties, see section 1251 of Title 28.

§ 1103. Powers and duties

(a) Attorney General

The Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided*, *however*, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter. He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.

(b) Commissioner; appointment

The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this chapter which are conferred upon the Attorney General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General.

(c) Statistical information system

(1) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws.

(2) Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), on aliens who have been excluded or deported from the United States, on the number of applications filed and granted for suspension of deportation, and on the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

(3) Such system shall provide for the collection and dissemination of such information not less often than annually.

(d) Annual report

(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (c) of this section and an analysis of trends in immigration and naturalization.

(2) Each annual report shall include information on the number, and rate of denial adminis-

tratively, of applications for naturalization, for each district office of the Service and by national origin group.

(June 27, 1952, ch. 477, title I, § 103, 66 Stat. 173; Oct. 24, 1988, Pub. L. 100–525, § 9(c), 102 Stat. 2619; Nov. 29, 1990, Pub. L. 101–649, title I, § 142, 104 Stat. 5004.)

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–649 added subsecs. (c) and (d).

1988—Subsec. (a). Pub. L. 100–525, § 9(c)(1), substituted ''instructions'' for ''intructions'' and amended fourth sentence generally. Prior to amendment, fourth sentence read as follows: ''He is authorized, in accordance with the civil-service laws and regulations and the Classification Act of 1949, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this chapter; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service.''

Subsec. (b). Pub. L. 100–525, § 9(c)(2), struck out provision that Commissioner was to receive compensation at rate of $17,500 per annum.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

MACHINE-READABLE DOCUMENT BORDER SECURITY PROGRAM

Pub. L. 100–690, title IV, § 4604, Nov. 18, 1988, 102 Stat. 4289, which required Department of State, United States Customs Service, and Immigration and Naturalization Service to develop a comprehensive machine-readable travel and identity document border security program that would improve border entry and departure control through automated data capture of machine-readable travel and identity documents, directed specified agencies and organizations to contribute law enforcement data for the system, authorized appropriations for the program, and required continuing full implementation in fiscal years 1990, 1991, and 1992, by all participating agencies, was repealed by Pub. L. 102–583, § 6(e)(1), Nov. 2, 1992, 106 Stat. 4933.

IMMIGRATION AND NATURALIZATION SERVICE PERSONNEL ENHANCEMENT

Pub. L. 100–690, title VII, § 7350, Nov. 18, 1988, 102 Stat. 4473, provided that:

''(a) PILOT PROGRAM REGARDING THE IDENTIFICATION OF CERTAIN ALIENS.—

''(1) Within 6 months after the effective date of this subtitle [Nov. 18, 1988], the Attorney General shall establish, out of funds appropriated pursuant to subsection (c)(2), a pilot program in 4 cities to improve the capabilities of the Immigration and Naturalization Service (hereinafter in this section referred to as the 'Service') to respond to inquiries from Federal, State, and local law enforcement authorities concerning aliens who have been arrested for or convicted of, or who are the subject of any criminal investigation relating to, a violation of any law relating to controlled substances (other than an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(43)], as added by section 7342 of this subtitle).

''(2) At the end of the 12-month period after the establishment of such pilot program, the Attorney General shall provide for an evaluation of its effectiveness, including an assessment by Federal, State, and local prosecutors and law enforcement agencies. The Attorney General shall submit a report containing the conclusions of such evaluation to the Committees on the Judiciary of the House of Representatives and of the Senate within 60 days after the completion of such evaluation.

''(b) HIRING OF INVESTIGATIVE AGENTS.—

''(1) Any investigative agent hired by the Attorney General for purposes of this section shall be employed exclusively to assist Federal, State, and local law enforcement agencies in combating drug trafficking and crimes of violence by aliens.

''(2) Any investigative agent hired under this section who is older than 35 years of age shall not be eligible for Federal retirement benefits made available to individuals who perform hazardous law enforcement activities.''

PILOT PROGRAM TO ESTABLISH OR IMPROVE COMPUTER CAPABILITIES

Pub. L. 99–570, title I, § 1751(e), Oct. 27, 1986, 100 Stat. 3207–48, provided that:

''(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

''(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.''

EMERGENCY PLANS FOR REGULATION OF NATIONALS OF ENEMY COUNTRIES

Attorney General to develop national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for control of persons entering or leaving the United States, see section 1101(4) of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

CROSS REFERENCES

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 of this title.

Definition of alien, Attorney General, Commissioner, consular officer, entry, immigration laws, and Service, see section 1101 of this title.

Office of Commissioner of Immigration and Naturalization, see section 1552 of this title.

§ 1104. Powers and duties of Secretary of State

(a) Powers and duties

The Secretary of State shall be charged with the administration and the enforcement of the provisions of this chapter and all other immigration and nationality laws relating to (1) the powers, duties, and functions of diplomatic and consular officers of the United States, except those powers, duties, and functions conferred

upon the consular officers relating to the granting or refusal of visas; (2) the powers, duties, and functions of the Administrator; and (3) the determination of nationality of a person not in the United States. He shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the department or independent establishment under whose jurisdiction the employee is serving, any of the powers, functions, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Department of State or of the American Foreign Service.

(b) Designation and duties of Administrator

The Secretary of State shall designate an Administrator who shall be a citizen of the United States, qualified by experience. The Administrator shall maintain close liaison with the appropriate committees of Congress in order that they may be advised regarding the administration of this chapter by consular officers. The Administrator shall be charged with any and all responsibility and authority in the administration of this chapter which are conferred on the Secretary of State as may be delegated to the Administrator by the Secretary of State or which may be prescribed by the Secretary of State, and shall perform such other duties as the Secretary of State may prescribe.

(c) Passport Office, Visa Office, and other offices; directors

Within the Department of State there shall be a Passport Office, a Visa Office, and such other offices as the Secretary of State may deem to be appropriate, each office to be headed by a director. The Directors of the Passport Office and the Visa Office shall be experienced in the administration of the nationality and immigration laws.

(d) Transfer of duties

The functions heretofore performed by the Passport Division and the Visa Division of the Department of State shall hereafter be performed by the Passport Office and the Visa Office, respectively.

(e) General Counsel of Visa Office; appointment and duties

There shall be a General Counsel of the Visa Office, who shall be appointed by the Secretary of State and who shall serve under the general direction of the Legal Adviser of the Department of State. The General Counsel shall have authority to maintain liaison with the appropriate officers of the Service with a view to securing uniform interpretations of the provisions of this chapter.

(June 27, 1952, ch. 477, title I, § 104, 66 Stat. 174; June 28 1962, Pub. L. 87-510, § 4(a)(2), 76 Stat. 123; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(43), 78 Stat. 428; Aug. 17, 1977, Pub. L. 95–105, title I, § 109(b)(1), 91 Stat. 847; Oct. 24, 1988, Pub. L. 100–525, § 9(d), 102 Stat. 2620; Apr. 30, 1994, Pub. L. 103–236, title I, § 162(h)(2), 108 Stat. 407.)

AMENDMENTS

1994—Pub. L. 103–236, § 162(h)(2)(A), struck out ''; Bureau of Consular Affairs'' after ''Secretary of State'' in section catchline.

Subsec. (a)(2). Pub. L. 103–236, § 162(h)(2)(B), substituted ''the Administrator'' for ''the Bureau of Consular Affairs''.

Subsec. (b). Pub. L. 103–236, § 162(h)(2)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There is established in the Department of State a Bureau of Consular Affairs, to be headed by an Assistant Secretary of State for Consular Affairs. The Assistant Secretary of State for Consular Affairs shall be a citizen of the United States, qualified by experience, and shall maintain close liaison with the appropriate committees of Congress in order that they may be advised regarding the administration of this chapter by consular officers. He shall be charged with any and all responsibility and authority in the administration of the Bureau and of this chapter which are conferred on the Secretary of State as may be delegated to him by the Secretary of State or which may be prescribed by the Secretary of State. He shall also perform such other duties as the Secretary of State may prescribe.''

Subsec. (c). Pub. L. 103–236, § 162(h)(2)(D), substituted ''Department of State'' for ''Bureau''.

Subsec. (d). Pub. L. 103–236, § 162(h)(2)(E), struck out before period at end '', of the Bureau of Consular Affairs''.

1988—Pub. L. 100–525 substituted ''Bureau of Consular Affairs'' for ''Bureau of Security and Consular Affairs'' in section catchline.

1977—Subsec. (a)(2). Pub. L. 95–105, § 109(b)(1)(A), struck out ''Security and'' after ''Bureau of''.

Subsec. (b). Pub. L. 95–105, § 109(b)(1)(B), substituted ''Consular Affairs, to be headed by an Assistant Secretary of State for Consular Affairs'' for ''Security and Consular Affairs, to be headed by an administrator (with an appropriate title to be designated by the Secretary of State), with rank equal to that of an Assistant Secretary of State'' and ''Assistant Secretary of State for Consular Affairs'' for ''administrator'' and struck out provision that the administrator shall be appointed by the President by and with the advice and consent of the Senate.

Subsec. (d). Pub. L. 95–105, § 109(b)(1)(C), struck out ''Security and'' after ''Bureau of''.

Subsec. (f). Pub. L. 95–105, § 109(b)(1)(D), struck out subsec. (f) which placed Bureau of Security and Consular Affairs under immediate jurisdiction of Deputy Under Secretary of State for Administration.

1964—Subsec. (b). Pub. L. 88–426 repealed provisions which related to compensation of Administrator. See section 5311 et seq. of Title 5, Government Organization and Employees.

1962—Subsec. (b). Pub. L. 87–510 provided for appointment of Administrator of Bureau of Security and Consular Affairs by President by and with advice and consent of Senate.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

ASSUMPTION OF DUTIES BY ADMINISTRATOR OF BUREAU OF SECURITY AND CONSULAR AFFAIRS

Section 109(b)(4) of Pub. L. 95–105 provided that: ''The individual holding the position of administrator of the

Bureau of Security and Consular Affairs on the date of enactment of this section [Aug. 17, 1977] shall assume the duties of the Assistant Secretary of State for Consular Affairs and shall not be required to be reappointed by reason of the enactment of this section.''

REFERENCES TO BUREAU OF SECURITY AND CONSULAR AFFAIRS OR ADMINISTRATOR

Section 109(b)(5) of Pub. L. 95–105 provided that: ''Any reference in any law to the Bureau of Security and Consular Affairs or to the administrator of such Bureau shall be deemed to be a reference to the Bureau of Consular Affairs or to the Assistant Secretary of State for Consular Affairs, respectively.''

CROSS REFERENCES

Definition of administrator, consular officer, immigrant visa, immigration laws, national, nonimmigrant visa, passport, and Service, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§1105. Liaison with internal security officers

The Commissioner and the Administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this chapter in the interest of the internal security of the United States. The Commissioner and the Administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administration of this chapter, and all other immigration and nationality laws.

(June 27, 1952, ch. 477, title I, §105, 66 Stat. 175; Aug. 17, 1977, Pub. L. 95–105, title I, §109(b)(2), 91 Stat. 847; Apr. 30, 1994, Pub. L. 103–236, title I, §162(h)(3), 108 Stat. 408.)

AMENDMENTS

1994—Pub. L. 103–236 substituted ''Administrator'' for ''Assistant Secretary of State for Consular Affairs'' in two places.

1977—Pub. L. 95–105 substituted ''Assistant Secretary of State for Consular Affairs'' for ''administrator'' in two places.

CROSS REFERENCES

Central Intelligence Agency, see section 403 et seq. of Title 50, War and National Defense.

Definition of administrator, Commissioner, and immigration laws, see section 1101 of this title.

Federal Bureau of Investigation, see section 531 et seq. of Title 28, Judiciary and Judicial Procedure.

§1105a. Judicial review of orders of deportation and exclusion

(a) Exclusiveness of procedure

The procedure prescribed by, and all the provisions of chapter 158 of title 28, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation, heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 1252(b) of this title or pursuant to section 1252a of this title or comparable provisions of any prior Act, except that—

(1) Time for filing petition

a petition for review may be filed not later than 90 days after the date of the issuance of the final deportation order, or, in the case of an alien convicted of an aggravated felony (including an alien described in section 1252a of this title), not later than 30 days after the issuance of such order;

(2) Venue

the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before a special inquiry officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this chapter, of the petitioner, but not in more than one circuit;

(3) Respondent; service of petition; stay of deportation

the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs or unless the alien is convicted of an aggravated felony (including an alien described in section 1252a of this title), in which case the Service shall not stay the deportation of the alien pending determination of the petition of the court unless the court otherwise directs;

(4) Determination upon administrative record

except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

(5) Claim of nationality; determination or transfer to district court for hearing de novo

whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28. Any such petitioner shall not be entitled to have such issue determined under section 1503(a) of this title or otherwise;

(6) Consolidation

whenever a petitioner seeks review of an order under this section, any review sought with respect to a motion to reopen or reconsider such an order shall be consolidated with the review of the order;

(7) Challenge of validity of deportation order in criminal proceeding; motion for judicial review before trial; hearing de novo on nationality claim; determination of motion; dismissal of indictment upon invalidity of order; appeal

if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 1252 of this title only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as to the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28. Any such alien shall not be entitled to have such issue determined under section 1503(a) of this title or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 1252 of this title;

(8) Deferment of deportation; compliance of alien with other provisions of law; detention or taking into custody of alien

nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 1252 of this title. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 1252 of this title at any time after the issuance of a deportation order;

(9) Typewritten record and briefs

it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs; and

(10) Habeas corpus

any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.

(b) Limitation of certain aliens to habeas corpus proceedings

Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 1226 of this title or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.

(c) Exhaustion of administrative remedies or departure from United States; disclosure of prior judicial proceedings

An order of deportation or of exclusion shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

(d) Petition contents

(1) A petition for review or for habeas corpus on behalf of an alien against whom a final order of deportation has been issued pursuant to section 1252a(b) of this title may challenge only—

(A) whether the alien is in fact the alien described in the order;

(B) whether the alien is in fact an alien described in section 1252a(b)(2) of this title;

(C) whether the alien has been convicted of an aggravated felony and such conviction has become final; and

(D) whether the alien was afforded the procedures required by section 1252a(b)(4) of this title.

(2) No court shall have jurisdiction to review any issue other than an issue described in paragraph (1).

(June 27, 1952, ch. 477, title I, § 106, as added Sept. 26, 1961, Pub. L. 87–301, § 5(a), 75 Stat. 651; amended Dec. 29, 1981, Pub. L. 97–116, § 18(b), 95 Stat. 1620; Oct. 24, 1988, Pub. L. 100–525, § 9(e), 102 Stat. 2620; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7347(b), 102 Stat. 4472; Nov. 29, 1990, Pub. L. 101–649, title V, §§ 502(a), 513(a), 545(b), 104 Stat. 5048, 5052, 5065; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(a)(2), 105 Stat. 1751; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130004(b), 108 Stat. 2027; Oct. 25, 1994, Pub. L. 103–416, title II, § 223(b), 108 Stat. 4322.)

REFERENCES IN TEXT

The Federal rules of criminal procedure, referred to in subsec. (a)(7), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 130004(b)(1), inserted ''or pursuant to section 1252a of this title'' after ''under section 1252(b) of this title'' in introductory provisions.

Subsec. (a)(1), (3). Pub. L. 103–322, § 130004(b)(2), inserted ''(including an alien described in section 1252a of this title)'' after ''aggravated felony''.

Subsec. (d). Pub. L. 103–416 substituted ''1252a(b)(4)'' for ''1252a(b)(5)'' in par. (1)(D).

Pub. L. 103–322, § 130004(b)(3), added subsec. (d).

1991—Subsec. (a)(1). Pub. L. 102–232 made technical correction to directory language of Pub. L. 101–649, § 502(a). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, § 545(b)(1), substituted ''90 days'' for ''6 months''.

Pub. L. 101–649, § 502(a), as amended by Pub. L. 102–232, substituted ''30 days'' for ''60 days''.

Subsec. (a)(3). Pub. L. 101–649, § 513(a), inserted before semicolon at end ''or unless the alien is convicted of an aggravated felony, in which case the Service shall not stay the deportation of the alien pending determination of the petition of the court unless the court otherwise directs''.

Subsec. (a)(6) to (10). Pub. L. 101–649, § 545(b)(2), (3), added par. (6) and redesignated former pars. (6) to (9) as (7) to (10), respectively.

1988—Subsec. (a). Pub. L. 100–525, § 9(e)(1), substituted ''chapter 158 of title 28'' for ''the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 100–690 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''a petition for review may be filed not later than six months from the date of the final deportation order.''

Pub. L. 100–525, § 9(e)(2), struck out ''or from the effective date of this section, whichever is the later''.

1981—Subsec. (a)(1). Pub. L. 97–116 substituted a semicolon for a period at end.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 130004(d) of Pub. L. 103–322 provided that: ''The amendments made by this section [amending this section and section 1252a 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 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 502(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to final deportation orders issued on or after January 1, 1991.''

Section 513(b) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 306(a)(11), Dec. 12, 1991, 105 Stat. 1751, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions for review filed more than 60 days after the date of the enactment of this Act [Nov. 29, 1990] and shall apply to convictions entered before, on, or after such date.''

Amendment by section 545(b) of Pub. L. 101–649 applicable to final orders of deportation entered on or after Jan. 1, 1991, see section 545(g)(4) of Pub. L. 101–649, set out as a note under section 1252b of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7347(b) of Pub. L. 100–690 applicable in the case of any alien convicted of an aggravated felony on or after Nov. 18, 1988, see section 7347(c) of Pub. L. 100–690, set out as an Effective Date note under section 1252a 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; PENDING PROCEEDINGS; SEPARABILITY

Section 5(b) of Pub. L. 87–301 provided that: ''This section shall take effect on the thirtieth day after its approval [Sept. 26, 1961] and, notwithstanding the provisions of any other law, including section 405 of the Immigration and Nationality Act [set out as a note under section 1101 of this title], shall then be applicable to all administrative proceedings involving deportation or exclusion of aliens notwithstanding (1) that the person involved entered the United States prior to the effective date of this section or of the Immigration and Nationality Act [this chapter] or (2) that the administrative proceeding was commenced or conducted prior to the effective date of this section or of the Immigration and Nationality Act [this chapter]. Any judicial proceeding to review an order of deportation which is pending unheard in any district court of the United States on the effective date of this section (other than a habeas corpus or criminal proceeding in which the validity of the deportation order has been challenged) shall be transferred for determination in accordance with this section to the court of appeals having jurisdiction to entertain a petition for review under this section. Any judicial proceeding to review an order of exclusion which is pending unheard on the effective date of this section shall be expedited in the same manner as is required in habeas corpus. All laws or parts of laws inconsistent with this section are, to the extent of such inconsistency, repealed. If any particular provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1252a, 1252b, 1255a of this title.

§ 1106. Repealed. Pub. L. 91–510, title IV, § 422(a), Oct. 26, 1970, 84 Stat. 1189

Section, act June 27, 1952, ch. 477, title IV, § 401, 66 Stat. 274, provided for establishment of Joint Committee on Immigration and Nationality, including its composition, necessity of membership on House or Senate Committee on the Judiciary, vacancies and election of chairman, functions, reports, submission of regulations to Committee, hearings and subpena, travel expenses, employment of personnel, payment of Committee expenses, and effective date.

EFFECTIVE DATE OF REPEAL

Repeal effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91–510, set out as an Effective Date of 1970 Amendment note under section 72a of Title 2, The Congress.

ABOLITION OF JOINT COMMITTEE ON IMMIGRATION AND NATIONALITY

Pub. L. 91–510, title IV, § 421, Oct. 26, 1970, 84 Stat. 1189, abolished the Joint Committee on Immigration and Nationality established by former subsec. (a) of this section.

SUBCHAPTER II—IMMIGRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1101, 1364 of this title.

PART I—SELECTION SYSTEM

§ 1151. Worldwide level of immigration

(a) In general

Exclusive of aliens described in subsection (b) of this section, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 1153(a) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(a) of this title) in a number not to exceed in any fiscal year the number specified in subsection (c) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

(2) employment-based immigrants described in section 1153(b) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(b) of this title), in a number not to exceed in any fiscal year the number specified in subsection (d) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 1153(c) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(c) of this title) in a number not to exceed in any fiscal year the number specified in subsection (e) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) Aliens not subject to direct numerical limitations

Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a) of this section, are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 1101(a)(27) of this title.

(B) Aliens who are admitted under section 1157 of this title or whose status is adjusted under section 1159 of this title.

(C) Aliens whose status is adjusted to permanent residence under section 1160, 1161,[1] or 1255a of this title.

(D) Aliens whose deportation is suspended under section 1254(a) of this title.

(E) Aliens provided permanent resident status under section 1259 of this title.

(2)(A)(i) IMMEDIATE RELATIVES.—For purposes of this subsection, the term ''immediate relatives'' means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 1154(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries.

(ii) Aliens admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(c) Worldwide level of family-sponsored immigrants

(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 480,000, minus

(ii) the number computed under paragraph (2), plus

(iii) the number (if any) computed under paragraph (3).

(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) of this section who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(a) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(b) of this title (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(d) Worldwide level of employment-based immigrants

(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

(A) 140,000, plus

(B) the number computed under paragraph (2).

(2)(A) The number computed under this paragraph for fiscal year 1992 is zero.

[1] See References in Text note below.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(b) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(a) of this title (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(e) Worldwide level of diversity immigrants

The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.

(June 27, 1952, ch. 477, title II, ch. 1, §201, 66 Stat. 175; Oct. 3, 1965, Pub. L. 89–236, §1, 79 Stat. 911; Oct. 20, 1976, Pub. L. 94–571, §2, 90 Stat. 2703; Oct. 5, 1978, Pub. L. 95–412, §1, 92 Stat. 907; Mar. 17, 1980, Pub. L. 96–212, title II, §203(a), 94 Stat. 106; Dec. 29, 1981, Pub. L. 97–116, §20[(a)], 95 Stat. 1621; Nov. 29, 1990, Pub. L. 101–649, title I, §101(a), 104 Stat. 4980; Dec. 12, 1991, Pub. L. 102–232, title III, §302(a)(1), 105 Stat. 1742; Sept. 13, 1994, Pub. L. 103–322, title IV, §40701(b)(2), 108 Stat. 1954; Oct. 25, 1994, Pub. L. 103–416, title II, §219(b)(1), 108 Stat. 4316.)

REFERENCES IN TEXT

Section 1161 of this title, referred to in subsec. (b)(1)(C), was repealed by Pub. L. 103–416, title II, §219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

AMENDMENTS

1994—Subsec. (b)(2)(A)(i). Pub. L. 103–416 inserted ''(and each child of the alien)'' after ''death, the alien'' in second sentence.

Pub. L. 103–322 substituted ''1154(a)(1)(A)(ii)'' for ''1154(a)(1)(A)''.

1991—Subsec. (c)(3). Pub. L. 102–232, §302(a)(1)(A), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted ''The number computed under this paragraph for a subsequent fiscal year'' for ''The number computed under this paragraph for a fiscal year''.

Subsec. (d)(2). Pub. L. 102–232, §302(a)(1)(B), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted ''The number computed under this paragraph for a subsequent fiscal year'' for ''The number computed under this paragraph for a fiscal year''.

1990—Pub. L. 101–649 amended section generally, substituting provisions setting forth general and worldwide levels for family-sponsored, employment-based, and diversity immigrants, for provisions setting forth numerical limitations on total lawful admissions without breakdown as to type.

1981—Subsec. (a). Pub. L. 97–116 inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101(a)(27)(H) of this title or section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect, to reduce to such extent the annual numerical limitation in effect for the following fiscal year.

1980—Subsec. (a). Pub. L. 96–212 inserted provisions relating to aliens admitted or granted asylums under section 1157 or 1158 of this title, struck out provisions relating to aliens entering conditionally under section 1153(a)(7) of this title, and decreased the authorized number from seventy-seven thousand to seventy-two thousand in each of the first three-quarters of any fiscal year, and from two hundred and ninety thousand to two hundred and seventy thousand in any fiscal year as the maximum number of admissions for such periods.

1978—Subsec. (a). Pub. L. 95–412 substituted provisions establishing a single worldwide annual immigration ceiling of 290,000 aliens and limiting to 77,000 the number of aliens subject to such ceiling which may be admitted in each of the first three quarters of any fiscal year for provisions establishing separate annual immigration ceilings of 170,000 aliens for the Eastern Hemisphere and 120,000 aliens for the Western Hemisphere and limiting to 45,000 the number of aliens subject to the Eastern Hemisphere ceiling and to 32,000 the number of aliens subject to the Western Hemisphere ceiling which may be admitted in the first three quarters of any fiscal year.

1976—Subsec. (a). Pub. L. 94–571, §2(1), in amending subsec. (a) generally, designated existing provisions as cl. (1) limited to aliens born in any foreign state or dependent area located in the Eastern Hemisphere and added cl. (2).

Subsecs. (c) to (e). Pub. L. 94–571, §2(2), struck out subsec. (c) which provided for determination of unused quota numbers, subsec. (d) which provided for an immigration pool, limitation on total numbers, and allocations therefrom, and subsec. (e) which provided for termination of immigration pool on June 30, 1968, and for carryover of admissible immigrants.

1965—Subsec. (a). Pub. L. 89–236 substituted provisions setting up a 170,000 maximum on total annual immigration and 45,000 maximum on total quarterly immigration without regard to national origins, for provisions setting an annual quota for quota areas which allowed admission of one-sixth of one per centum of portion of national population of continental United States in 1920 attributable by national origin of that quota area and setting a minimum quota of 100 for each quota area.

Subsec. (b). Pub. L. 89–236 substituted provisions defining ''immediate relatives'' for provisions calling for a determination of annual quota for each quota area by Secretaries of State and Commerce and Attorney General, and proclamation of quotas by President.

Subsec. (c). Pub. L. 89–236 substituted provisions allowing carryover through June 30, 1968, of quotas for quota areas in effect on June 30, 1965, and redistribution of unused quota numbers, for provisions which limited issuance of immigrant visas.

Subsec. (d). Pub. L. 89–236 substituted provisions creating an immigration pool and allocating its numbers without reference to the quotas to which an alien is chargeable, for provisions allowing issuance of an immigrant visa to an immigrant as a quota immigrant even though he might be a nonquota immigrant.

Subsec. (e). Pub. L. 89–236 substituted provisions terminating the immigration pool on June 30, 1968, for provisions permitting reduction of annual quotas based on national origins pursuant to Act of Congress prior to effective date of proclaimed quotas.

EFFECTIVE DATE OF 1994 AMENDMENTS

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

Section 40701(d) of Pub. L. 103–322 provided that: ''The amendments made by this section [amending this section and section 1154 of this title] shall take effect January 1, 1995.''

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

Section 20 of Pub. L. 89–236 provided that: ''This Act [amending this section and sections 1101, 1152 to 1156, 1181, 1182, 1201, 1202, 1204, 1251, 1253, 1254, 1255, 1259, 1322, and 1351 of this title, repealing section 1157 of this title, and enacting provisions set out as a note under this section] shall become effective on the first day of the first month after the expiration of thirty days following the date of its enactment [Oct. 3, 1965] except as provided herein.''

TRANSITION RELATING TO DEATH OF CITIZEN SPOUSE

Section 101(c) of Pub. L. 101–649, as added by Pub. L. 102–232, title III, § 302(a)(2), Dec. 12, 1991, 105 Stat. 1742, provided that: ''In applying the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)(A)(i)] (as amended by subsection (a)) in the case of a [sic] alien whose citizen spouse died before the date of the enactment of this Act [Nov. 29, 1990], notwithstanding the deadline specified in such sentence the alien spouse may file the classification petition referred to in such sentence within 2 years after the date of the enactment of this Act.''

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in subsec. (a) of this section not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97–271, set out as a note under section 1255 of this title.

EXEMPTION FROM NUMERICAL LIMITATIONS FOR CERTAIN ALIENS WHO APPLIED FOR ADJUSTMENT TO STATUS OF PERMANENT RESIDENT ALIENS ON OR BEFORE JUNE 1, 1978

Section 19 of Pub. L. 97–116 provided that: ''The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title] shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

''(1) qualified as a nonpreference immigrant under section 203(a)(8) of such Act [section 1153(a)(8) of this title] (as in effect on June 1, 1978);

''(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act [section 1182(a)(14) of this title] because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

''(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.''

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Section 4 of Pub. L. 95–412, as amended by Pub. L. 96–132, § 23, Nov. 30, 1979, 93 Stat. 1051, provided for the establishment of a Select Commission on Immigration and Refugee Policy to study and evaluate existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States, to make such administrative and legislative recommendations to the President and Congress as appropriate, and to submit a final report no later than Mar. 1, 1981, at which time it ceased to exist although it was authorized to function for up to 60 days thereafter to wind up its affairs.

SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Section 21(a)–(d) and (f)–(h) of Pub. L. 89–236 established a Select Commission on Western Hemisphere Immigration to study the operation of the immigration laws of the United States as they pertain to Western Hemisphere nations, with emphasis on the adequacy of such laws from the standpoint of fairness and the impact of such laws on employment and working conditions within the United States, and to make a final report to the President on or before Jan. 15, 1968, and terminate not later than 60 days after filing the final report.

TERMINATION OF QUOTA DEDUCTIONS

Section 10 of Pub. L. 85–316, Sept. 11, 1957, 71 Stat. 642, provided that the quota deductions required under the provisions of former subsec. (e) of this section, the Displaced Persons Act of 1948, as amended, the act of June 30, 1950, and the act of April 9, 1952 were terminated effective July 1, 1957.

CROSS REFERENCES

Definition of immigrant, immigrant visa, and national, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1152, 1153, 1154, 1160, 1186a, 1255, 1255a of this title.

§ 1151a. Repealed. Pub. L. 94–571, § 7(g), Oct. 20, 1976, 90 Stat. 2706

Section, Pub. L. 89–236, § 21(e), Oct. 3, 1965, 79 Stat. 921, limited total number of special immigrants under section 1101(a)(27)(A) of this title, less certain exclusions, to 120,000 for fiscal years beginning July 1, 1968, or later.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 60 days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

§ 1152. Numerical limitations on individual foreign states

(a) Per country level

(1) Nondiscrimination

Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i),

and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(2) Per country levels for family-sponsored and employment-based immigrants

Subject to paragraphs (3) and (4), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, 75 percent of the 2–A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2–A floor" defined

In this paragraph, the term ''2–A floor'' means, for a fiscal year, 77 percent of the total number of visas made available under section 1153(a) of this title to immigrants described in section 1153(a)(2) of this title in the fiscal year.

(B) Treatment of remaining 25 percent for countries subject to subsection (e)

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, the remaining 25 percent of the 2–A floor shall be available in the case of a state or area that is subject to subsection (e) of this section only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

(ii) "Subsection (e) ceiling" defined

In clause (i), the term ''subsection (e) ceiling'' means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants who are natives of the state or area under section 1153(a)(2) of this title consistent with subsection (e) of this section.

(C) Treatment of unmarried sons and daughters in countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, the number of immigrant visas that may be made available to natives of the state or area under section 1153(a)(2)(B) of this title may not exceed—

(i) 23 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e) of this section, or

(ii) the number (if any) by which the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e) of this section exceeds the number of visas issued under section 1153(a)(2)(A) of this title,

whichever is greater.

(D) Limiting pass down for certain countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, if the total number of visas issued under section 1153(a)(2) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153(a)(2) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 1153(a) of this title under subsection (e)(2) of this section all visas shall be deemed to have been required for the classes specified in paragraphs (1) and (2) of such section.

(b) Rules for chargeability

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has

not reached a numerical level established under subsection (a)(2) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Chargeability for dependent areas

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 1151(b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a) of this section, to the foreign state.

(d) Changes in territory

In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change issue appropriate instructions to all diplomatic and consular offices.

(e) Special rules for countries at ceiling

If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 1153 of this title to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) of this section in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 1153 of this title, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 1153 of this title) in a manner so that—

(1) the ratio of the visa numbers made available under section 1153(a) of this title to the visa numbers made available under section 1153(b) of this title is equal to the ratio of the worldwide level of immigration under section 1151(c) of this title to such level under section 1151(d) of this title;

(2) except as provided in subsection (a)(4) of this section, the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 1153(a) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(a) of this title, and

(3) the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 1153(b) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(b) of this title.

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 1153(a) or 1153(b) of this title if there is insufficient demand for visas for such natives under section 1153(b) or 1153(a) of this title, respectively, or as limiting the number of visas that may be issued under section 1153(a)(2)(A) of this title pursuant to subsection (a)(4)(A) of this section.

(June 27, 1952, ch. 477, title II, ch. 1, § 202, 66 Stat. 176; Sept. 26, 1961, Pub. L. 87–301, § 9, 75 Stat. 654; Oct. 3, 1965, Pub. L. 89–236, § 2, 79 Stat. 911; Oct. 20, 1976, Pub. L. 94–571, § 3, 90 Stat. 2703; Oct. 5, 1978, Pub. L. 95–412, § 2, 92 Stat. 907; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(b), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97–116, §§ 18(c), 20(b), 95 Stat. 1620, 1622; Nov. 6, 1986, Pub. L. 99–603, title III, § 311(a), 100 Stat. 3434; Nov. 14, 1986, Pub. L. 99–653, § 4, 100 Stat. 3655; Oct. 24, 1988, Pub. L. 100–525, §§ 8(c), 9(f), 102 Stat. 2617, 2620; Nov. 29, 1990, Pub. L. 101–649, title I, § 102, 104 Stat. 4982; Dec. 12, 1991, Pub. L. 102–232, title III, § 302(a)(3), 105 Stat. 1742.)

AMENDMENTS

1991—Subsec. (a)(4)(A). Pub. L. 102–232 struck out ''minimum'' before ''2nd preference set-aside'' in heading.

1990—Subsec. (a). Pub. L. 101–649, § 102(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in sections 1101(a)(27), 1151(b), and 1153 of this title: *Provided*, That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 1153(a) of this title shall not exceed 20,000 in any fiscal year: *And provided further*, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitations of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 1101(a)(27) of this title or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.''

Subsec. (b). Pub. L. 101–649, § 102(2), inserted heading and substituted reference to numerical level established under subsec. (a)(2) of this section for reference to numerical limitation set forth in proviso to subsec. (a) of this section, wherever appearing.

Subsec. (c). Pub. L. 101–649, § 102(3), inserted heading and substituted ''an alien described in section 1151(b) of this title'' for ''a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title'' and struck out '', and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year'' after ''to the foreign state''.

Subsec. (d). Pub. L. 101–649, §102(4), inserted heading.

Subsec. (e). Pub. L. 101–649, §102(5), amended subsec. (e) generally, substituting provisions relating to special rules for countries at ceiling for provisions relating to availability and allocation of additional visas.

1988—Subsec. (b). Pub. L. 100–525, §8(c), amended Pub. L. 99–653, §4. See 1986 Amendment note below.

Subsec. (c). Pub. L. 100–525, §9(f)(1), substituted ''subsection (a)'' for ''section 202(a)'' in original, which for purposes of codification had been translated as ''subsection (a) of this section''.

Subsec. (e). Pub. L. 100–525, §9(f)(2), substituted ''this section'' for ''section 202'' in original, which for purposes of codification had been translated as ''this section''.

1986—Subsec. (b). Pub. L. 99–653, as amended by Pub. L. 100–525, §8(c), amended subsec. (b) generally, substituting ''outlying possessions, shall'' for ''outlying possessions shall'', in cl. (1) substituting ''when accompanied by or following to join his alien'' for ''when accompanied by his alien'', ''charged to the foreign state of either parent'' for ''charged to the same foreign state as the accompanying parent or of either accompanying parent'', ''from the parent'' for ''from the accompanying parent'', ''and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical'' for ''and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical'', in cl. (2) substituting ''of his spouse'' for ''of his accompanying spouse'', ''of the spouse he is accompanying or following to join'' for ''of the accompanying spouse'', ''and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical'' for ''and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical'', and in cl. (3) substituting ''subject, or, if'' for ''subject, or if'' and ''country, in'' for ''country then in''.

Subsec. (c). Pub. L. 99–603, §311(a)(1), substituted ''5,000'' for ''six hundred''.

Subsec. (e). Pub. L. 99–603, §311(a)(2), substituted ''5,000'' for ''600'' in provisions preceding par. (1).

1981—Subsec. (a). Pub. L. 97–116, §20(b), inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of natives who are issued visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101(a)(27)(H) of this title and section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect for such year, to reduce to such extent the numerical limitation in effect for the natives of the same foreign state for the following fiscal year.

Subsec. (b). Pub. L. 97–116, §18(c), inserted ''and'' before ''(4)''.

1980—Subsec. (a). Pub. L. 96–212, §203(b)(1), (2), substituted ''through (7)'' for ''through (8)'', and struck out ''and the number of conditional entries'' after ''visas''.

Subsec. (e). Pub. L. 96–212, §203(b)(3)–(7), in introductory text struck out provisions relating to applicability to conditional entries, in par. (2) substituted ''(26)'' for ''(20)'', struck out par. (7) relating to availability of conditional entries, and redesignated par. (8) as (7) and substituted ''through (6)'' for ''through (7)''.

1978—Subsec. (c). Pub. L. 95–412 substituted ''limitation set forth in subsection (a) of this section, to the foreign state,'' for ''limitations set forth in section 1151(a) and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively,'' and ''six hundred'' for ''600''.

1976—Subsec. (a). Pub. L. 94–571, §3(1), struck out last proviso which read: ''*Provided further*, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968''.

Subsec. (c). Pub. L. 94–571, §3(2), in revising provisions, substituted ''overseas from the foreign state, other than a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title, shall be chargeable for the purpose of the limitations set forth in section 1151(a) of this title and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year'' for ''unless a special immigrant as provided in section 1101(a)(27) of this title or an immediate relative of a United States citizen as specified in section 1151(b) of this title, shall be chargeable, for the purpose of limitation set forth in subsection (a) of this section, to the foreign state, except that the number of persons born in any such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state''.

Subsec. (e). Pub. L. 94–571, §3(3), added subsec. (e).

1965—Subsec. (a). Pub. L. 89–236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (b). Pub. L. 89–236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandated territory, and trusteeship territory as a separate foreign state for purposes of determining the numerical limitation imposed on each foreign state, and chargeability of immigrants to the country of their birth except where such chargeability would cause the family unit to be divided, for provisions setting up the Asia-Pacific triangle and providing for the special treatment of quota chargeability thereunder on the basis of racial ancestry.

Subsec. (c). Pub. L. 89–236 substituted provisions making immigrants born in colonies or other component or dependent areas of a foreign state chargeable to the foreign state and placing a limitation on the number of such immigrants of 1 per centum of the maximum number of visas available to the foreign state, for provisions making immigrants born in colonies for which no specific quota are set chargeable to the governing country and placing a limit of 100 on such immigrants from each governing country each year, with special application to the Asia-Pacific triangle.

Subsec. (d). Pub. L. 89–236 substituted provisions requiring Secretary of State, upon a change in the territorial limits of foreign states, to issue appropriate instructions to all diplomatic and consular offices, for provisions that the terms of an immigration quota for a quota area do not constitute recognition of the transfer of territory or of a government not recognized by the United States.

Subsec. (e). Pub. L. 89–236 repealed subsec. (e) which allowed revision of quotas.

1961—Subsec. (e). Pub. L. 87–301 provided that if an area undergoes a change of administrative arrangements, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area immediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(c) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

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

Section 311(b) of Pub. L. 99–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 6, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

TREATMENT OF HONG KONG UNDER PER COUNTRY LEVELS

Section 103 of Pub. L. 101–649 provided that: ''The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [8 U.S.C. 1152(b)] shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act [8 U.S.C. 1153(a), (b)] in each of fiscal years 1991, 1992, and 1993 may not exceed 10,000.''

[Section 103 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in text not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97–271, set out as a note under section 1255 of this title.

EXEMPTION FROM NUMERICAL LIMITATIONS FOR CERTAIN ALIENS WHO APPLIED FOR ADJUSTMENT TO STATUS OF PERMANENT RESIDENT ALIENS ON OR BEFORE JUNE 1, 1978

For provisions rendering inapplicable the numerical limitations contained in this section to certain aliens who had applied for adjustment to the status of permanent resident alien on or before June 1, 1978, see section 19 of Pub. L. 97–116, set out as a note under section 1151 of this title.

APPROVAL BY SECRETARY OF STATE TREATING TAIWAN (CHINA) AS SEPARATE FOREIGN STATE FOR PURPOSES OF NUMERICAL LIMITATION ON IMMIGRANT VISAS

Pub. L. 97–113, title VII, § 714, Dec. 29, 1981, 95 Stat. 1548, provided that: ''The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [subsec. (b) of this section] shall be considered to have been granted with respect to Taiwan (China).''

CROSS REFERENCES

Definition of alien, Attorney General, child, consular officer, immigrant, immigrant visa, outlying possessions of the United States, parent, residence, spouse, wife, or husband, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1160, 1255, 1255a, 1255b of this title; title 22 section 3303.

§ 1153. Allocation of immigrant visas

(a) Preference allocation for family-sponsored immigrants

Aliens subject to the worldwide level specified in section 1151(c) of this title for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens

Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens

Qualified immigrants—

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) Married sons and married daughters of citizens

Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) Brothers and sisters of citizens

Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) Preference allocation for employment-based immigrants

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) Priority workers

Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability

An alien is described in this subparagraph if—

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(B) Outstanding professors and researchers

An alien is described in this subparagraph if—

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States—

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) Certain multinational executives and managers

An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer

The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(C) Determination of exceptional ability

In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) Skilled workers, professionals, and other workers

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers

Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing

skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals

Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) Other workers

Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(B) Limitation on other workers

Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

(C) Labor certification required

An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(5)(A) of this title.

(4) Certain special immigrants

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 1101(a)(27) of this title (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 1101(a)(27)(C)(ii) of this title.

(5) Employment creation

(A) In general

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise—

(i) which the alien has established,

(ii) in which such alien has invested (after November 29, 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

(B) Set-aside for targeted employment areas

(i) In general

Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who establish a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.

(ii) "Targeted employment area" defined

In this paragraph, the term ''targeted employment area'' means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).

(iii) "Rural area" defined

In this paragraph, the term ''rural area'' means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

(C) Amount of capital required

(i) In general

Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be $1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

(ii) Adjustment for targeted employment areas

The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than ½ of) the amount specified in clause (i).

(iii) Adjustment for high employment areas

In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment—

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate,

the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i).

(6) Special rules for "K" special immigrants

(A) Not counted against numerical limitation in year involved

Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 1101(a)(27)(K) of this title in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 1152(a) of this title.

(B) Counted against numerical limitations in following year

(i) Reduction in employment-based immigrant classifications

The number of visas made available in any fiscal year under paragraphs (1), (2),

and (3) shall each be reduced by ⅓ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title.

(ii) Reduction in per country level

The number of visas made available in each fiscal year to natives of a foreign state under section 1152(a) of this title shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(iii) Reduction in employment-based immigrant classifications within per country ceiling

In the case of a foreign state subject to section 1152(e) of this title in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by ⅓ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(c) Diversity immigrants

(1) In general

Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) Determination of preference immigration

The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 1151(a) of this title (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 1151(b)(2) of this title.

(B) Identification of high-admission and low-admission regions and high-admission and low-admission states

The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a ''high-admission region'') for which the total of the numbers determined under subparagraph (A) for states in the region is greater than ⅙ of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a ''low-admission region''); and

(ii) shall identify—

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a ''high-admission state''), and

(II) each other foreign state (each such state in this paragraph referred to as a ''low-admission state'').

(C) Determination of percentage of worldwide immigration attributable to high-admission regions

The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) Determination of regional populations excluding high-admission states and ratios of populations of regions within low-admission regions and high-admission regions

The Attorney General shall determine—

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) Distribution of visas

(i) No visas for natives of high-admission states

The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) For low-admission states in low-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) For low-admission states in high-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) Redistribution of unused visa numbers

If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the

number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) Limitation on visas for natives of a single foreign state

The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(F) "Region" defined

Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

(i) Africa.

(ii) Asia.

(iii) Europe.

(iv) North America (other than Mexico).

(v) Oceania.

(vi) South America, Mexico, Central America, and the Caribbean.

(2) Requirement of education or work experience

An alien is not eligible for a visa under this subsection unless the alien—

(A) has at least a high school education or its equivalent, or

(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

(3) Maintenance of information

The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(d) Treatment of family members

A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) Order of consideration

(1) Immigrant visas made available under subsection (a) or (b) of this section shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 1101(a)(27)(D) of this title, with the Secretary of State) as provided in section 1154(a) of this title.

(2) Immigrant visa numbers made available under subsection (c) of this section (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) Authorization for issuance

In the case of any alien claiming in his application for an immigrant visa to be described in section 1151(b)(2) of this title or in subsection (a), (b), or (c) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 1154 of this title.

(g) Lists

For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) of this section and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

(June 27, 1952, ch. 477, title II, ch. 1, § 203, 66 Stat. 178; Sept. 11, 1957, Pub. L. 85–316, § 3, 71 Stat. 639; Sept. 22, 1959, Pub. L. 86–363, §§ 1–3, 73 Stat. 644; Oct. 3, 1965, Pub. L. 89–236, § 3, 79 Stat. 912; Oct. 20, 1976, Pub. L. 94–571, § 4, 90 Stat. 2705; Oct. 5, 1978, Pub. L. 95–412, § 3, 92 Stat. 907; Oct. 5, 1978, Pub. L. 95–417, § 1, 92 Stat. 917; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(c), (i), 94 Stat. 107, 108; Nov. 29, 1990, Pub. L. 101–649, title I, §§ 111, 121(a), 131, 162(a)(1), title VI, § 603(a)(3), 104 Stat. 4986, 4987, 4997, 5009, 5082; Oct. 1, 1991, Pub. L. 102–110, § 2(b), 105 Stat. 555; Dec. 12, 1991, Pub. L. 102–232, title III, § 302(b)(2), (e)(3), 105 Stat. 1743, 1745; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 212(b), 219(c), 108 Stat. 4314, 4316.)

AMENDMENTS

1994—Subsec. (b)(5)(B), (C). Pub. L. 103–416, § 219(c), substituted "Targeted" and "targeted" for "Targetted" and "targetted", respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103–416, § 212(b), struck out subpar. (C) which related to application of separate numerical limitations.

1991—Subsec. (b)(1). Pub. L. 102–232, § 302(b)(2)(A), substituted "28.6 percent of such worldwide level" for "40,000".

Subsec. (b)(1)(C). Pub. L. 102–232, § 302(b)(2)(B), substituted "the alien seeks" for "who seeks".

Subsec. (b)(2)(A). Pub. L. 102–232, § 302(b)(2)(A), substituted "28.6 percent of such worldwide level" for "40,000".

Subsec. (b)(2)(B). Pub. L. 102–232, § 302(b)(2)(D), inserted "professions," after "arts,".

Subsec. (b)(3)(A). Pub. L. 102–232, §302(b)(2)(A), substituted ''28.6 percent of such worldwide level'' for ''40,000''.

Subsec. (b)(4), (5)(A). Pub. L. 102–232, §302(b)(2)(C), substituted ''7.1 percent of such worldwide level'' for ''10,000''.

Subsec. (b)(6). Pub. L. 102–110 added par. (6).

Subsec. (f). Pub. L. 102–232, §302(e)(3), substituted ''Authorization for issuance'' for ''Presumption'' in heading, struck out at beginning ''Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 1101(a)(27) of this title, or section 1151(b)(2) of this title, until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described.'', and substituted ''1151(b)(2) of this title or in subsection (a), (b), or (c)'' for ''1151(b)(1) of this title or in subsection (a) or (b)''.

1990—Subsec. (a). Pub. L. 101–649, §111(2), added subsec. (a) and struck out former subsec. (a) which related to allocation of visas of aliens subject to section 1151(a) limitations.

Subsec. (a)(7). Pub. L. 101–649, §603(a)(3), substituted ''section 1182(a)(5) of this title'' for ''section 1182(a)(14) of this title''.

Subsec. (b). Pub. L. 101–649, §§111(1), 121(a), added subsec. (b) and redesignated former subsec. (b) as (d).

Subsec. (c). Pub. L. 101–649, §§111(1), 131, added subsec. (c) and redesignated former subsec. (c) as (e).

Subsec. (d). Pub. L. 101–649, §162(a)(1), added subsec. (d) and struck out former subsec. (d) which related to order of consideration given applications for immigrant visas.

Pub. L. 101–649, §111(1), redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 101–649, §162(a)(1), added subsec. (e) and struck out former subsec. (e) which related to order of issuance of immigrant visas.

Pub. L. 101–649, §111(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 101–649, §162(a)(1), added subsec. (f) and struck out former subsec. (f) which related to presumption of nonpreference status and grant of status by consular officers.

Pub. L. 101–649, §111(1), redesignated subsec. (d) as (f).

Subsec. (g). Pub. L. 101–649, §162(a)(1), added subsec. (g) and struck out former subsec. (g) which related to estimates of anticipated numbers of visas to be issued, termination and reinstatement of registration of aliens, and revocation of approval of petition.

Pub. L. 101–649, §111(1), redesignated subsec. (e) as (g).

1980—Subsec. (a). Pub. L. 96–212, §203(c)(1)–(6), in introductory text struck out applicability to conditional entry, in par. (2) substituted ''(26)'' for ''(20)'', struck out par. (7) relating to availability of conditional entries, redesignated former par. (8) as (7) and struck out applicability to number of conditional entries and visas available under former par. (7), and redesignated former par. (9) as (8) and substituted provisions relating to applicability of pars. (1) to (7) to visas, for provisions relating to applicability of pars. (1) to (8) to conditional entries.

Subsec. (d). Pub. L. 96–212, §203(c)(7), substituted ''preference status under paragraphs (1) through (6)'' for ''preference status under paragraphs (1) through (7)''.

Subsec. (f). Pub. L. 96–212, §203(c)(8), struck out subsec. (f) which related to reports to Congress of refugees conditionally entering the United States.

Subsec. (g). Pub. L. 96–212, §203(c)(8), struck out subsec. (g) which set forth provisions respecting inspection and examination of refugees after one year.

Pub. L. 96–212, §203(i), substituted provisions relating to inspection and examination of refugees after one year for provisions relating to inspection and examination of refugees after two years.

Subsec. (h). Pub. L. 96–212, §203(c)(8), struck out subsec. (h) which related to the retroactive readjustment of refugee status as an alien lawfully admitted for permanent residence.

1978—Subsec. (a)(1) to (7). Pub. L. 95–412 substituted ''1151(a) of this title'' for ''1151(a)(1) or (2) of this title'' wherever appearing.

Subsec. (a)(8). Pub. L. 95–417 inserted provisions requiring a valid adoption home-study prior to the granting of a nonpreference visa for children adopted abroad or coming for adoption by United States citizens and requiring that no other nonpreference visa be issued to an unmarried child under the age of 16 unless accompanying or following to join his natural parents.

1976—Subsec. (a). Pub. L. 94–571, §4(1)–(3), substituted ''section 1151(a)(1) or (2) of this title'' for ''section 1151(a)(ii) of this title'' in pars. (1) to (7); made visas available, in par. (3), to qualified immigrants whose services in the professions, sciences, or arts are sought by an employer in the United States; and required, in par. (5), that the United States citizens be at least twenty-one years of age.

Subsec. (e). Pub. L. 94–571, §4(4), substituted provision requiring Secretary of State to terminate the registration of an alien who fails to apply for an immigrant visa within one year following notification of the availability of such visa, including provision for reinstatement of a registration upon establishment within two years following the notification that the failure to apply was due to circumstances beyond the alien's control for prior provision for discretionary termination of the registration on a waiting list of an alien failing to evidence continued intention to apply for a visa as prescribed by regulation and inserted provision for automatic revocation of approval of a petition approved under section 1154(b) of this title upon such termination.

1965—Subsec. (a). Pub. L. 89–236 substituted provisions setting up preference priorities and percentage allocations of the total numerical limitation for the admission of qualified immigrants, consisting of unmarried sons or daughters of U.S. citizens (20 percent), husbands, wives, and unmarried sons or daughters of alien residents (20 percent plus any unused portion of class 1), members of professions, scientists, and artists (10 percent), married sons or daughters of U.S. citizens (10 percent plus any unused portions of classes 1–3), brothers or sisters of U.S. citizens (24 percent plus any unused portions of classes 1 through 4), skilled or unskilled persons capable of filling labor shortages in the United States (10 percent), refugees (6 percent), otherwise qualified immigrants (portion not used by classes 1 through 7), and allowing a spouse or child to be given the same status and order of consideration as the spouse or parent, for provisions spelling out the preferences under the quotas based on the previous national origins quota systems.

Subsec. (b). Pub. L. 89–236 substituted provisions requiring that consideration be given applications for immigrant visas in the order in which the classes of which they are members are listed in subsec. (a), for provisions allowing issuance of quota immigrant visas under the previous national origins quota system in the order of filing in the first calendar month after receipt of notice of approval for which a quota number was available.

Subsec. (c). Pub. L. 89–236 substituted provisions requiring issuance of immigrant visas pursuant to paragraphs (1) through (6) of subsection (a) of this section in the order of filing of the petitions therefor with the Attorney General, for provisions which related to issuance of quota immigrant visas in designated classes in the order of registration in each class on quota waiting lists.

Subsec. (d). Pub. L. 89–236 substituted provisions requiring each immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the order for consideration of applications for quota immigrant visas under the various prior classes.

Subsec. (e). Pub. L. 89–236 substituted provisions authorizing Secretary of State to make estimates of an-

ticipated members of visas issued and to terminate the waiting-list registration of any registrant failing to evidence a continued intention to apply for a visa, for provisions establishing a presumption of quota status for immigrants and requiring the immigrant to establish any claim to a preference.

Subsecs. (f) to (h). Pub. L. 89–236 added subsecs. (f) to (h).

1959—Subsec. (a)(2). Pub. L. 86–363, § 1, accorded adult unmarried sons or daughters of United States citizens second preference in the allocation of immigrant visas within quotas.

Subsec. (a)(3). Pub. L. 86–363, § 2, substituted ''unmarried sons or daughters'' for ''children''.

Subsec. (a)(4). Pub. L. 86–363, § 3, substituted ''married sons or married daughters'' for ''sons, or daughters'', increased percentage limitation from 25 to 50 per centum, and made preference available to spouses and children of qualified quota immigrants if accompanying them.

1957—Subsec. (a)(1). Pub. L. 85–316 substituted ''or following to join him'' for ''him''.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENTS

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

Amendment by Pub. L. 102–110 effective 60 days after Oct. 1, 1991, see section 2(d) of Pub. L. 102–110, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 111, 121(a), 131, 162(a)(1) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, with general transition provisions, see section 161(a), (c) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(3) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 203(c) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(i) of Pub. L. 96–212 effective immediately before Apr. 1, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

SOVIET SCIENTISTS IMMIGRATION

Pub. L. 102–509, Oct. 24, 1992, 106 Stat. 3316, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Soviet Scientists Immigration Act of 1992'.

''SEC. 2. DEFINITIONS.

''For purposes of this Act—

''(1) the term 'Baltic states' means the sovereign nations of Latvia, Lithuania, and Estonia;

''(2) the term 'independent states of the former Soviet Union' means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and

''(3) the term 'eligible independent states and Baltic scientists' means aliens—

''(A) who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

''(B) who are scientists or engineers who have expertise in nuclear, chemical, biological or other high technology fields or who are working on nuclear, chemical, biological or other high-technology defense projects, as defined by the Attorney General.

''SEC. 3. WAIVER OF JOB OFFER REQUIREMENT.

''The requirement in section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)) that an alien's services in the sciences, arts, or business be sought by an employer in the United States shall not apply to any eligible independent states or Baltic scientist who is applying for admission to the United States for permanent residence in accordance with that section.

''SEC. 4. CLASSIFICATION OF INDEPENDENT STATES SCIENTISTS AS HAVING EXCEPTIONAL ABILITY.

''(a) IN GENERAL.—The Attorney General shall designate a class of eligible independent states and Baltic scientists, based on their level of expertise, as aliens who possess 'exceptional ability in the sciences', for purposes of section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)), whether or not such scientists possess advanced degrees.

''(b) REGULATIONS.—The Attorney General shall prescribe regulations to carry out subsection (a).

''(c) LIMITATION.—Not more than 750 eligible independent states and Baltic scientists (excluding spouses and children if accompanying or following to join) within the class designated under subsection (a) may be allotted visas under section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)).

''(d) TERMINATION.—The authority of subsection (a) shall terminate 4 years after the date of enactment of this Act [Oct. 24, 1992].''

PILOT IMMIGRATION PROGRAM

Pub. L. 102–395, title VI, § 610, Oct. 6, 1992, 106 Stat. 1874, provided that:

''(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

''(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Attorney General, shall set aside 300 visas annually for five years to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)] and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], to accompany or follow to join such aliens.

''(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)(A)(iii)], and notwithstanding the requirements of 8 CFR 204.6, the Attorney General shall permit aliens admitted under the pilot program de-

scribed in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports resulting from the pilot program.''

TRANSITION FOR SPOUSES AND MINOR CHILDREN OF LEGALIZED ALIENS

Section 112 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(1), Dec. 12, 1991, 105 Stat. 1743, provided that:

''(a) ADDITIONAL VISA NUMBERS.—

''(1) IN GENERAL.—In addition to any immigrant visas otherwise available, immigrant visa numbers shall be available in each of fiscal years 1992, 1993, and 1994 for spouses and children of eligible, legalized aliens (as defined in subsection (c)) in a number equal to 55,000 minus the number (if any) computed under paragraph (2) for the fiscal year.

''(2) OFFSET.—The number computed under this paragraph for a fiscal year is the number (if any) by which—

''(A) the sum of the number of aliens described in subparagraphs (A) and (B) of section 201(b)(2) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)] (or, for fiscal year 1992, section 201(b) of such Act) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year, exceeds

''(B) 239,000.

''(b) ORDER.—Visa numbers under this section shall be made available in the order in which a petition, in behalf of each such immigrant for classification under section 203(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2)], is filed with the Attorney General under section 204 of such Act [8 U.S.C. 1154].

''(c) LEGALIZED ALIEN DEFINED.—In this section, the term 'legalized alien' means an alien lawfully admitted for permanent residence who was provided—

''(1) temporary or permanent residence status under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160],

''(2) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], or

''(3) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out as a note under section 1255a of this title].

''(d) DEFINITIONS.—The definitions in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.''

TRANSITION FOR EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG

Section 124 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(5), Dec. 12, 1991, 105 Stat. 1743, provided that:

''(a) ADDITIONAL VISA NUMBERS.—

''(1) TREATMENT OF PRINCIPALS.—In the case of any alien described in paragraph (3) (or paragraph (2) as the spouse or child of such an alien) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991 through 1993 and without regard to section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)], up to 12,000 additional immigrant visas. If the full number of such visas are not made available in fiscal year 1991 or 1992, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

''(2) DERIVATIVE RELATIVES.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, the alien's spouse or parent.

''(3) EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.—An alien is described in this paragraph if the alien—

''(A) is a resident of Hong Kong and is employed in Hong Kong except for temporary absences at the request of the employer and has been employed in Hong Kong for at least 12 consecutive months as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least $50,000,000, and

''(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

''(b) PETITIONS.—Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

''(c) ALLOCATION.—Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

''(d) DEFINITIONS.—In this section:

''(1) EXECUTIVE CAPACITY.—The term 'executive capacity' has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(44)(B)], as added by section 123 of this Act.

''(2) MANAGERIAL CAPACITY.—The term 'managerial capacity' has the meaning given such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as added by section 123 of this Act.

''(3) OFFICER.—The term 'officer' means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

''(4) SPECIALIZED KNOWLEDGE.—The term 'specialized knowledge' has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act [8 U.S.C. 1184(c)(2)(B)], as amended by section 206(b)(2) of this Act.

''(5) SUPERVISOR.—The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.''

[Section 124 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal

year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

DIVERSITY TRANSITION FOR ALIENS WHO ARE NATIVES OF CERTAIN ADVERSELY AFFECTED FOREIGN STATES

Section 217(b) of Pub. L. 103–416 provided that:

''(1) ELIGIBILITY.—For the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a) [amending section 132 of Pub. L. 101–649, set out below], applications for natives of diversity transition countries submitted for fiscal year 1995 for diversity immigrants under section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] shall be considered applications for visas made available for fiscal year 1995 for the diversity transition program under section 132 of the Immigration Act of 1990 [section 132 of Pub. L. 101–649]. No application period for the fiscal year 1995 diversity transition program shall be established and no new applications may be accepted for visas made available under such program for fiscal year 1995. Applications for visas in excess of the minimum available to natives of the country specified in section 132(c) of the Immigration Act of 1990 shall be selected for qualified applicants within the several regions defined in section 203(c)(1)(F) of the Immigration and Nationality Act in proportion to the region's share of visas issued in the diversity transition program during fiscal years 1992 and 1993.

''(2) NOTIFICATION.—Not later than 180 days after the date of enactment of this Act [Oct. 25, 1994], notification of the extension of the diversity transition program for fiscal year 1995 and the provision of visa numbers shall be made to each eligible applicant under paragraph (1).

''(3) REQUIREMENTS.—Notwithstanding any other provision of law, for the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), the requirement of section 132(b)(2) of the Immigration Act of 1990 shall not apply to applicants under such extension and the requirement of section 203(c)(2) of the Immigration and Nationality Act shall apply to such applicants.''

Section 132 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(6), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 103–416, title II, § 217(a), Oct. 25, 1994, 108 Stat. 4315, provided that:

''(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152], there shall be made available to qualified immigrants described in subsection (b) (or in subsection (d) as the spouse or child of such an alien) 40,000 immigrant visas in each of fiscal years 1992, 1993, and 1994 and in fiscal year 1995 a number of immigrant visas equal to the number of such visas provided (but not made available) under this section in previous fiscal years. If the full number of such visas are not made available in fiscal year 1992 or 1993, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

''(b) QUALIFIED ALIEN DESCRIBED.—An alien described in this subsection is an alien who—

''(1) is a native of a foreign state that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below],

''(2) has a firm commitment for employment in the United States for a period of at least 1 year (beginning on the date of admission under this section), and

''(3) except as provided in subsection (c), is admissible as an immigrant.

''(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available strictly in a random order among those who qualify during the application period for each fiscal year established by the Secretary of State, except that at least 40 percent of the number of such visas in each fiscal year shall be made available to natives of the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act [of 1986] (or to aliens described in subsection (d) who are the spouses or children of such natives) and except that if more than one application is submitted for any fiscal year (beginning with fiscal year 1993) with respect to any alien all such applications submitted with respect to the alien and fiscal year shall be voided. If the minimum number of such visas are not made available in fiscal year 1992, 1993, or 1994 to such natives, the shortfall shall be added to the number of such visas to be made available under this section to such natives in the succeeding fiscal year. In applying this section, natives of Northern Ireland shall be deemed to be natives of Ireland.

''(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

''(e) WAIVERS OF GROUNDS OF EXCLUSION.—In determining the admissibility of an alien provided a visa number under this section, the Attorney General shall waive the ground of exclusion specified in paragraph (6)(C) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)], unless the Attorney General finds that such a waiver is not in the national interest. In addition, the provisions of section 212(e) of such Act shall not apply so as to prevent an individual's application for a visa or admission under this section.

''(f) APPLICATION FEE.—The Secretary of State shall require payment of a reasonable fee for the filing of an application under this section in order to cover the costs of processing applications under this section.''

[Section 302(b)(6)(C) of Pub. L. 102–232 provided that the amendment made by that section to section 132(b)(1) of Pub. L. 101–649, set out above, is effective after fiscal year 1992.]

[Section 302(b)(6)(D)(i) of Pub. L. 102–232 provided that the amendment made by that section to section 132(c) of Pub. L. 101–649, set out above, is effective beginning with fiscal year 1993.]

ONE-YEAR DIVERSITY TRANSITION FOR ALIENS WHO HAVE BEEN NOTIFIED OF AVAILABILITY OF NP–5 VISAS

Section 133 of Pub. L. 101–649 provided that: ''Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152], there shall be made available in fiscal year 1991 immigrant visa numbers for qualified immigrants who—

''(1) were notified by the Secretary of State before May 1, 1990, of their selection for issuance of a visa under section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below], and

''(2) are qualified for the issuance of such a visa but for (A) numerical and fiscal year limitations on the issuance of such visas, (B) section 212(a)(19) or 212(e) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(19), (e)], or (C) the fact that the immigrant was a national, but not a native, of a foreign state described in section 314 of the Immigration Reform and Control Act of 1986.

Visas shall be made available under this section to spouses and children of qualified immigrants in the same manner as such visas were made available to such spouses and children under section 314 of the Immigration Reform and Control Act of 1986. The Attorney General may waive section 212(a)(19) of the Immigration and Nationality Act (or, on or after June 1, 1991, section 212(a)(6)(C) of such Act) in the case of qualified immigrants described in the first sentence of this section.''

[Section 133 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal

year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

TRANSITION FOR DISPLACED TIBETANS

Section 134 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(7), Dec. 12, 1991, 105 Stat. 1744, provided that:

''(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152], there shall be made available to qualified displaced Tibetans described in subsection (b) (or in subsection (d) as the spouse or child of such an alien) 1,000 immigrant visas in the 3-fiscal-year period beginning with fiscal year 1991.

''(b) QUALIFIED DISPLACED TIBETAN DESCRIBED.—An alien described in this subsection is an alien who—

''(1) is a native of Tibet, and

''(2) since before date of the enactment of this Act [Nov. 29, 1990], has been continuously residing in India or Nepal.

For purposes of paragraph (1), an alien shall be considered to be a native of Tibet if the alien was born in Tibet or is the son, daughter, grandson, or granddaughter of an individual born in Tibet.

''(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available to displaced aliens described in subsection (b) (or described in subsection (d) as the spouse or child of such an alien) in an equitable manner, giving preference to those aliens who are not firmly resettled in India or Nepal or who are most likely to be resettled successfully in the United States.

''(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.''

[Section 134 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS

Section 155 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(d)(5), Dec. 12, 1991, 105 Stat. 1745, provided that:

''(a) IN GENERAL.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) (or section 203(e), in the case of fiscal year 1992) of the Immigration and Nationality Act [8 U.S.C. 1153(c), (e)] (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

''(b) LEBANESE IMMIGRANTS COVERED.—Lebanese immigrants described in this subsection are aliens who—

''(1) are natives of Lebanon,

''(2) are not firmly resettled in any foreign country outside Lebanon, and

''(3) as of the date of the enactment of this Act [Nov. 29, 1990], are the beneficiaries of a petition approved to accord status under section 203(a)(2) or 203(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2), (5)] (as in effect as of the date of the enactment of this Act),

or who are the spouse or child of such an alien if accompanying or following to join the alien.''

[Section 155 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

ORDER OF CONSIDERATION

Section 162(a)(2) of Pub. L. 101–649 provided that: ''Nothing in this Act [see Tables for classification] may be construed as continuing the availability of visas under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], as in effect before the date of enactment of this Act [Nov. 29, 1990].''

MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION

Pub. L. 100–658, § 3, Nov. 15, 1988, 102 Stat. 3908, provided that:

''(a) AUTHORIZATION OF ADDITIONAL VISAS.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act [8 U.S.C. 1151(a)] (relating to worldwide level of immigration), but subject to the numerical limitations in section 202 of such Act [8 U.S.C. 1152] (relating to per country numerical limitations), there shall be made available to qualified immigrants who are natives of underrepresented countries 10,000 visa numbers in each of fiscal years 1990 and 1991.

''(b) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers were made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], except that such visas shall be made available strictly in a random order among those who qualify during an application period established by the Secretary of State and except that if more than one petition is submitted with respect to any alien all such petitions submitted with respect to the alien shall be voided.

''(c) WAIVER OF LABOR CERTIFICATION.—Section 212(a)(14) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(14)] shall not apply in the determination of an immigrant's eligibility to receive any visa made available under this section or in the admission of such an immigrant issued a visa under this section.

''(d) APPLICATION OF DEFINITIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization.

''(e) UNDERREPRESENTED COUNTRY DEFINED.—In this section, the term 'underrepresented country' means a foreign state natives of which used, during fiscal year 1988, less than 25 percent of the maximum number of immigrant visa numbers otherwise available to it in that fiscal year under section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)]. In applying the previous sentence, there shall not be taken into account visa numbers issued under section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below].''

MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS

Pub. L. 99–603, title III, § 314, Nov. 6, 1986, 100 Stat. 3439, as amended by Pub. L. 100–658, § 2(a), Nov. 15, 1988, 102 Stat. 3908, provided that:

''(a) AUTHORIZATION OF ADDITIONAL VISAS.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151(a)), but subject to the numerical limitations in section 202 of such Act [8 U.S.C. 1152], there shall be made available to qualified immigrants described in section

203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] 5,000 visa numbers in each of fiscal years 1987 and 1988 and 15,000 visa numbers in each of fiscal years 1989 and 1990.

''(b) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers are otherwise made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], except that—

''(1) the Secretary shall first make such visa numbers available to qualified immigrants who are natives of foreign states the immigration of whose natives to the United States was adversely affected by the enactment of Public Law 89–236 [see Tables for classification], and

''(2) within groups of qualified immigrants, such visa numbers shall be made available strictly in the chronological order in which they qualify after the date of the enactment of this Act [Nov. 6, 1986].

''(c) WAIVER OF LABOR CERTIFICATION.—Section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)) shall not apply in the determination of an immigrant's eligibility to receive any visa made available under this section or in the admission of such an immigrant issued such a visa under this section.

''(d) APPLICATION OF DEFINITIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization.''

[Pub. L. 100–658, § 2(b), Nov. 15, 1988, 102 Stat. 3908, provided that: ''In carrying out the amendment made by subsection (a) [amending Pub. L. 99–603, § 314(a), set out above], the Secretary of State shall continue to use the list of qualified immigrants established under section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603] before the date of the enactment of this Act [Nov. 15, 1988], and may continue to carry out such section under the regulations in effect (as of the date of July 1, 1988) under part 43 of title 22 of the Code of Federal Regulations.'']

REFERENCES TO CONDITIONAL ENTRY REQUIREMENTS OF SUBSECTION (a)(7) OF THIS SECTION IN OTHER FEDERAL LAWS

Section 203(h) of Pub. L. 96–212 provided that: ''Any reference in any law (other than the Immigration and Nationality Act [this chapter] or this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title]) in effect on April 1, 1980, to section 203(a)(7) of the Immigration and Nationality Act [subsec. (a)(7) of this section] shall be deemed to be a reference to such section as in effect before such date and to sections 207 and 208 of the Immigration and Nationality Act [sections 1157 and 1158 of this title].''

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

For adjustment of the status of refugees paroled into the United States pursuant to section 1182(d)(5) of this title, see section 5 of Pub. L. 95–412, set out as a note under section 1182 of this title.

ENTITLEMENT TO PREFERENTIAL STATUS

Section 9 of Pub. L. 94–571 provided that:

''(a) The amendments made by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title] shall not operate to effect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section] as in effect on the day before the effective date of this Act [see Effective Date of 1976 Amendment note set out under section 1101 of this title], on the basis of a petition filed with the Attorney General prior to such effective date.

''(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note under section 1101 of this title] shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act [subsec. (a)(8) of this section] and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section], as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) [subsec. (a) of this section] shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title], as amended by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title].''

NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JANUARY 1, 1962

Pub. L. 87–885, § 1, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99–653, § 11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100–525, § 8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962

Pub. L. 87–885, § 2, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99–653, § 11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100–525, § 8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS

Pub. L. 87–301, § 25, Sept. 26, 1961, 75 Stat. 657, as amended by Pub. L. 99–653, § 11, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, § 8(j)(2), Oct. 24, 1988, 102 Stat. 2617, provided that: ''At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act [Sept. 26, 1961] a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat.

490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.''

[Section 23(c) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: ''The amendments made by section 11 [amending section 25 of Pub. L. 87–301 set out above and repealing sections 1 and 2 of Pub. L. 87–885] take effect on November 14, 1986.'']

ADOPTED SONS OR ADOPTED DAUGHTERS, PREFERENCE STATUS

Section 5(c) of Pub. L. 86–363 provided that aliens granted a preference pursuant to petitions approved by the Attorney General on the ground that they were the adopted sons or adopted daughters of United States citizens were to remain in that status notwithstanding the provisions of section 1 of Pub. L. 86–363, unless they acquired a different immigrant status pursuant to a petition approved by the Attorney General.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1958

Section 12A of Pub. L. 85–316, as added by section 2 of Pub. L. 85–700, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87–301, § 24(a)(6), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12A of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1957

Section 12 of Pub. L. 85–316 providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, shall be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87–301, § 24(a)(5), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12 of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

SPECIAL NONQUOTA IMMIGRANT VISAS FOR REFUGEES

Section 6 of Pub. L. 86–363 authorizing issuance of nonquota immigrant visas to aliens eligible to enter for permanent residence if the alien was the beneficiary of a visa petition approved by the Attorney General, and such petition was filed by a person admitted under former section 1971 et seq., of Title 50, Appendix, was repealed by Pub. L. 87–301, § 24(a)(7), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 6 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

NONQUOTA IMMIGRANT STATUS OF SPOUSES AND CHILDREN OF CERTAIN ALIENS

Section 4 of Pub. L. 86–363 providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87–301, § 24(a)(7), Sept. 26, 1961.

Repeal of section 4 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

CROSS REFERENCES

Definition of alien, application for admission, Attorney General, child, consular officer, immigrant, immigrant visa, immigration officer, lawfully admitted for permanent residence, parent, and spouse, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1154, 1182, 1186a, 1186b, 1251, 1255 of this title; title 42 sections 602, 615, 1382j.

§ 1154. Procedure for granting immigrant status

(a) Petitioning procedure

(1)(A)(i) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 1153(a) of this title or to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 1151(b)(2)(A)(i) of this title also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii) An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who has resided in the United States with the alien's spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States, the marriage between the alien and the spouse was entered into in good faith by the alien, and during the marriage the alien or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien.

(iv) An alien who is the child of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title, and who has resided in the United States with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States and during the period of residence with the citizen parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien.

(B)(i) Any alien lawfully admitted for permanent residence claiming that an alien is entitled

to a classification by reason of the relationship described in section 1153(a)(2) of this title may file a petition with the Attorney General for such classification.

(ii) An alien who is the spouse of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who has resided in the United States with the alien's legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iii)) under such section if the alien demonstrates to the Attorney General that the conditions described in subclauses (I) and (II) of subparagraph (A)(iii) are met with respect to the alien.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section 1153(a)(2)(A) of this title, and who has resided in the United States with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States and during the period of residence with the permanent resident parent the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien.

(C) Any alien desiring to be classified under section 1153(b)(1)(A) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(D) Any employer desiring and intending to employ within the United States an alien entitled to classification under section 1153(b)(1)(B), 1153(b)(1)(C), 1153(b)(2), or 1153(b)(3) of this title may file a petition with the Attorney General for such classification.

(E)(i) Any alien (other than a special immigrant under section 1101(a)(27)(D) of this title) desiring to be classified under section 1153(b)(4) of this title, or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 1101(a)(27)(D) of this title may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(F) Any alien desiring to be classified under section 1153(b)(5) of this title may file a petition with the Attorney General for such classification.

(G)(i) Any alien desiring to be provided an immigrant visa under section 1153(c) of this title may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 1153(c) of this title for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(H) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term ''spousal second preference petition'' refers to a petition, seeking preference status under section 1153(a)(2) of this title, for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

(b) Investigation; consultation; approval; authorization to grant preference status

After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 1153(b)(2) or 1153(b)(3) of this title, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 1151(b) of this title, or is eli-

gible for preference under subsection (a) or (b) of section 1153 of this title, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud

Notwithstanding the provisions of subsection (b) of this section no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

(d) Recommendation of valid home-study

Notwithstanding the provisions of subsections (a) and (b) of this section no petition may be approved on behalf of a child defined in section 1101(b)(1)(F) of this title unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

(e) Subsequent finding of non-entitlement to preference classification

Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as an immigrant under subsection (a), (b), or (c) of section 1153 of this title or as an immediate relative under section 1151(b) of this title if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

(f) Preferential treatment for children fathered by United States citizens and born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982

(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 1151(b), 1153(a)(1), or 1153(a)(3) of this title, as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition for an alien under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982, and (ii) was fathered by a United States citizen;

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien's placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and (C)(ii) of paragraph (2); and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) A guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must—

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the ''sponsor'') who is twenty-one years of age or older, is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to assume legal custody for the alien after the alien's departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 9902(2) of title 42 and as revised by the Secretary of Health and Human Services under the second and third sentences of such section) for a family of the same size as the size of the alien's family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against

his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under title 11.

(g) Restriction on petitions based on marriages entered while in exclusion or deportation proceedings

Notwithstanding subsection (a) of this section, except as provided in section 1255(e)(3) of this title, a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 1255(e)(2) of this title, until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

(h) Survival of rights to petition

The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) of this section or a petition filed under subsection (a)(1)(B)(ii) of this section pursuant to conditions described in subsection (a)(1)(A)(iii)(I) of this section.

(June 27, 1952, ch. 477, title II, ch. 1, § 204, 66 Stat. 179; Oct. 24, 1962, Pub. L. 87–885, § 3, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89–236, § 4, 79 Stat. 915; Oct. 20, 1976, Pub. L. 94–571, § 7(b), 90 Stat. 2706; Oct. 5, 1978, Pub. L. 95–417, §§ 2, 3, 92 Stat. 917; Oct. 19, 1980, Pub. L. 96–470, title II, § 207, 94 Stat. 2245; Dec. 29, 1981, Pub. L. 97–116, §§ 3, 18(d), 95 Stat. 1611, 1620; Oct. 22, 1982, Pub. L. 97–359, 96 Stat. 1716; Nov. 10, 1986, Pub. L. 99–639, §§ 2(c), 4(a), 5(b), 100 Stat. 3541, 3543; Oct. 24, 1988, Pub. L. 100–525, § 9(g), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(b), title VII, § 702(b), 104 Stat. 5010, 5086; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 302(e)(4), (5), 308(b), 309(b)(5), 105 Stat. 1745, 1746, 1757, 1758; Sept. 13, 1994, Pub. L. 103–322, title IV, § 40701(a), (b)(1), (c), 108 Stat. 1953, 1954; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(b)(2), 108 Stat. 4316.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, § 40701(a), in subpar. (A), designated first sentence as cl. (i) and second sentence as cl. (ii) and added cls. (iii) and (iv), in subpar. (B), designated existing provisions as cl. (i) and added cls. (ii) and (iii), and added subpar. (H).

Subsec. (a)(1)(A). Pub. L. 103–416 in second sentence inserted ''spouse'' after ''alien'' and ''of the alien (and the alien's children)'' after ''for classification''.

Subsec. (a)(2). Pub. L. 103–322, § 40701(b)(1), in subpar. (A), substituted ''for the classification of the spouse of an alien if the alien,'' for ''filed by an alien who,'' in introductory provisions and in subpar. (B), substituted ''for the classification of the spouse of an alien if the prior marriage of the alien'' for ''by an alien whose prior marriage''.

Subsec. (h). Pub. L. 103–322, § 40701(c), added subsec. (h).

1991—Subsec. (a)(1)(A). Pub. L. 102–232, § 302(e)(4)(A), inserted sentence at end authorizing filing of petitions by aliens described in second sentence of section 1151(b)(2)(A)(i) of this title.

Subsec. (a)(1)(F). Pub. L. 102–232, § 302(e)(4)(B), substituted ''Attorney General'' for ''Secretary of State''.

Subsec. (a)(1)(G)(iii). Pub. L. 102–232, § 302(e)(4)(C), struck out ''or registration'' after ''petition''.

Subsec. (e). Pub. L. 102–232, § 302(e)(5), substituted ''as an immigrant'' for ''as a immigrant''.

Subsec. (f)(4)(A)(ii)(II). Pub. L. 102–232, § 309(b)(5), substituted ''the second and third sentences of such section'' for ''section 9847 of title 42''.

Subsec. (g). Pub. L. 102–232, § 308(b), made technical correction to directory language of Pub. L. 101–649, § 702(b). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, § 162(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 1153(a) of this title, or to an immediate relative status under section 1151(b) of this title, or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 1153(a)(2) of this title, or any alien desiring to be classified as a preference immigrant under section 1153(a)(3) of this title (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 1153(a)(6) of this title, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.''

Subsec. (b). Pub. L. 101–649, § 162(b)(2), substituted reference to section 1153(b)(2) or 1153(b)(3) of this title for reference to section 1153(a)(3) or (6) of this title, and reference to preference under section 1153(a) or (b) of this title for reference to a preference status under section 1153(a) of this title.

Subsec. (e). Pub. L. 101–649, § 162(b)(3), substituted ''immigrant under subsection (a), (b), or (c) of section 1153 of this title'' for ''preference immigrant under section 1153(a) of this title''.

Subsec. (f). Pub. L. 101–649, § 162(b)(5), (6), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to applicability of provisions to qualified immigrants specified in section 1152(e) of this title.

Subsec. (f)(1). Pub. L. 101–649, § 162(b)(4), substituted reference to section 1153(a)(3) of this title for reference to section 1153(a)(4) of this title.

Subsec. (g). Pub. L. 101–649, § 702(b), as amended by Pub. L. 102–232, § 308(b), inserted ''except as provided in section 1255(e)(3) of this title,'' after ''Notwithstanding subsection (a) of this section,''.

Pub. L. 101–649, § 162(b)(6), redesignated subsec. (h) as (g). Former subsec. (g) redesignated as (f).

Subsec. (h). Pub. L. 101–649, § 162(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (c). Pub. L. 100–525, § 9(g)(1), substituted ''an immediate relative'' for ''a nonquota''.

Subsec. (g)(3)(A). Pub. L. 100–525, § 9(g)(2), substituted ''(C)(ii) of paragraph (2)'' for ''(C)(i) of paragraph 2''.

1986—Subsec. (a). Pub. L. 99–639, § 2(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99–639, § 4(a), inserted ''(1)'' after ''if'' and '', or has sought to be accorded,'' and added cl. (2).

Subsec. (h). Pub. L. 99–639, § 5(b), added subsec. (h).

1982—Subsec. (g). Pub. L. 97–359 added subsec. (g).

1981—Subsec. (a). Pub. L. 97–116, § 18(d), substituted ''of a relationship described in paragraph'' for ''of the relationships described in paragraphs''.

Subsec. (d). Pub. L. 97–116, § 3, redesignated subsec. (e) as (d). Former subsec. (d), directing that the Attorney General forward to the Congress a Statistical summary of petitions for immigrant status approved by him under section 1153(a)(3) or 1153(a)(6) of this title and that the reports be submitted to Congress on the first and fifteenth day of each calendar month in which Congress was in session, was struck out.

Subsecs. (e), (f). Pub. L. 97–116, § 3, redesignated as subsec. (e) the subsec. (f) relating to subsequent finding

of non-entitlement. See 1978 Amendment note below. Former subsec. (e) redesignated (d).

1980—Subsec. (d). Pub. L. 96–470 substituted provision requiring the Attorney General to forward to Congress a statistical summary of approved petitions for professional or occupational preferences for provision requiring the Attorney General to forward to Congress a report on each petition approved for professional or occupational preference stating the basis for his approval and the facts pertinent in establishing qualifications for preferential status.

1978—Subsec. (c). Pub. L. 95–417, § 2, struck out ''no more than two petitions may be approved for one petitioner on behalf of a child as defined in section 1101(b)(1)(E) or 1101(b)(1)(F) of this title unless necessary to prevent the separation of brothers and sisters and'' after ''subsection (b) of this section''.

Subsecs. (e), (f). Pub. L. 95–417, § 3, added subsec. (e) and redesignated former subsec. (e), relating to subsequent finding of non-entitlement, as subsec. (f) without regard to existing subsec. (f), relating to provisions applicable to qualified immigrants, added by Pub. L. 94–571.

1976—Subsec. (f). Pub. L. 94–571 added subsec. (f).

1965—Subsec. (a). Pub. L. 89–236 substituted provisions spelling out the statutory grounds for filing a petition for preference status and prescribing the authority of the Attorney General to require documentary evidence in support and the form of the petition, for provisions prohibiting consular officers from granting preference status before being authorized to do so in cases of applications based on membership in the ministry of a religious denomination or high education, technical training, or specialized experience which would be substantially beneficial to the United States.

Subsec. (b). Pub. L. 89–236 substituted provisions authorizing investigation of petitions by the Attorney General, consultation with the Secretary of Labor, and authorization to consular officers, for provisions specifying the form of application for preference status on the basis of membership in the ministry of a religious denomination or high education, technical training, or specialized experience which would be substantially beneficial to the United States and the circumstances making an application appropriate.

Subsec. (c). Pub. L. 89–236 substituted provisions limiting the number of orphan petitions which may be approved for one petitioner and prohibiting approval of any petition of an alien whose prior marriage was determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, for provisions which related to investigation of facts by the Attorney General and submission of reports to Congress covering the granting of preferential status.

Subsec. (d). Pub. L. 89–236 substituted provisions requiring the Attorney General to submit reports to Congress on each approved petition for professional or occupational preference, for provisions prohibiting a statutory construction of the section which would entitle an immigrant to preferential classification if, upon arrival at the port of entry, he was found not to be entitled to such classification.

Subsec. (e). Pub. L. 89–236 added subsec. (e).

1962—Subsec. (c). Pub. L. 87–885 provided for submission of reports to Congress.

EFFECTIVE DATE OF 1994 AMENDMENTS

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

Amendment by Pub. L. 103–322 effective Jan. 1, 1995, see section 40701(d) of Pub. L. 103–322, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 302(e)(4), (5) and 308(b) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 162(b) of Pub. L. 101–649 effective Nov. 29, 1990, but only insofar as section 162(b) relates to visas for fiscal years beginning with fiscal year 1992, with general transition provisions, see section 161(b), (c) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Section 702(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending sections 1154 and 1255 of this title] shall apply to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(b) of Pub. L. 99–639 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to petitions filed on or after the date of the enactment of this Act [Nov. 10, 1986].''

Section 5(c) of Pub. L. 99–639 provided that: ''The amendments made by this section [amending this section and section 1255 of this title] shall apply to marriages entered into on or after the date of the enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

ALIEN SHEEPHERDERS

Act Sept. 3, 1954, ch. 1254, §§ 1–3, 68 Stat. 1145, provided for the importation of skilled alien sheepherders upon approval by the Attorney General, certification to the Secretary of State by the Attorney General of names and addresses of sheepherders whose applications for importation were approved, and issuance of not more than 385 special nonquota immigrant visas. Provisions of said act expired on Sept. 3, 1955, by terms of section 1 thereof.

CROSS REFERENCES

Definition of alien, Attorney General, consular officer, immigrant, immigrant visa, organization, and person, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1153, 1155, 1182, 1184, 1186a, 1255, 1255a of this title.

§ 1155. Revocation of approval of petitions; notice of revocation; effective date

The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition. In no case, however, shall such revocation have effect unless there is mailed to the petitioner's last known address a notice of the revocation and unless notice of the revocation is communicated through the Secretary of State to the beneficiary of the petition

before such beneficiary commences his journey to the United States. If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility shall be determined in the manner provided for by sections 1225 and 1226 of this title.

(June 27, 1952, ch. 477, title II, ch. 1, § 205, 66 Stat. 180; Sept. 22, 1959, Pub. L. 86–363, § 5(a), (b), 73 Stat. 644, 645; Sept. 26, 1961, Pub. L. 87–301, §§ 3, 10, 75 Stat. 650, 654; Oct. 3, 1965, Pub. L. 89–236, § 5, 79 Stat. 916.)

AMENDMENTS

1965—Pub. L. 89–236 struck out entire section which had set out, in subsecs. (a) to (d), the procedure for granting nonquota status or preference by reason of relationship and inserted in its place, with minor changes, provisions formerly contained in section 1156 of this title authorizing the Attorney General to revoke his approval of petitions for good and sufficient cause.

1961—Subsec. (b). Pub. L. 87–301, § 3(a), provided that no petition for quota immigration status or a preference shall be approved if the beneficiary is an alien defined in section 1101(b)(1)(F) of this title, established requirements to be met by petitioners before a petition for nonquota immigrant status for a child as defined in section 1101(b)(1)(F) can be approved by the Attorney General, and authorized the administration of oaths by immigration officers when the petition is executed outside the United States.

Subsec. (c). Pub. L. 87–301, §§ 3(b), 10, substituted ''section 1101(b)(1)(E) or (F)'' for ''section 1101(b)(1)(E)'', and provided that no petition shall be approved if the alien had previously been accorded a nonquota status under section 1101(a)(27)(A) of this title or a preference quota status under section 1153(a)(3) of this title, by reason of marriage entered into to evade the immigration laws.

1959—Subsec. (b). Pub. L. 86–363, § 5(a), authorized filing of petitions by any United States citizen claiming that an immigrant is his unmarried son or unmarried daughter, by any alien lawfully admitted for permanent residence claiming that an immigrant is his unmarried son or unmarried daughter instead of child, or by any United States citizen claiming that an immigrant is his married son or married daughter instead of son or daughter, and prohibited approval of petition for quota immigrant status or preference of alien without proof of parent relationship of the petitioner to such alien.

Subsec. (c). Pub. L. 86–363, § 5(b), limited approval to two petitions for one petitioner in behalf of a child as defined in section 1101(b)(1)(E) of this title unless necessary to prevent separation of brothers and sisters.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of alien, Attorney General, child, consular officer, entry, immigrant, immigrant visa, lawfully admitted for permanent residence, parent, and spouse, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1154 of this title.

§ 1156. Unused immigrant visas

If an immigrant having an immigrant visa is excluded from admission to the United States and deported, or does not apply for admission before the expiration of the validity of his visa, or if an alien having an immigrant visa issued to him as a preference immigrant is found not to be a preference immigrant, an immigrant visa or a preference immigrant visa, as the case may be, may be issued in lieu thereof to another qualified alien.

(June 27, 1952, ch. 477, title II, ch. 1, § 206, 66 Stat. 181; Oct. 3, 1965, Pub. L. 89–236, § 6, 79 Stat. 916.)

AMENDMENTS

1965—Pub. L. 89–236 substituted provisions allowing immigrant visas or preference immigrant visas to be issued to another qualified alien in lieu of immigrants excluded or deported, immigrants failing to apply for admission, or immigrants found not to be preference immigrants, for provisions relating to revocation of approval of petitions which, with minor amendments, were transferred to section 1155 of this title.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of application for admission and Attorney General, see section 1101 of this title.

§ 1157. Annual admission of refugees and admission of emergency situation refugees

(a) Maximum number of admissions; increases for humanitarian concerns; allocations

(1) Except as provided in subsection (b) of this section, the number of refugees who may be admitted under this section in fiscal year 1980, 1981, or 1982, may not exceed fifty thousand unless the President determines, before the beginning of the fiscal year and after appropriate consultation (as defined in subsection (e) of this section), that admission of a specific number of refugees in excess of such number is justified by humanitarian concerns or is otherwise in the national interest.

(2) Except as provided in subsection (b) of this section, the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

(3) Admissions under this subsection shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.

(4) In the determination made under this subsection for each fiscal year (beginning with fiscal year 1992), the President shall enumerate, with the respective number of refugees so determined, the number of aliens who were granted asylum in the previous year.

(b) Determinations by President respecting number of admissions for humanitarian concerns

If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a) of this section, the President may

fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after the appropriate consultation provided under this subsection.

(c) Admission by Attorney General of refugees; criteria; admission status of spouse or child; applicability of other statutory requirements; termination of refugee status of alien, spouse or child

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b) of this section, the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter.

(2) A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 1101(a)(42) of this title, be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this chapter. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 1101(a)(42) of this title at the time of the alien's admission.

(d) Oversight reporting and consultation requirements

(1) Before the start of each fiscal year the President shall report to the Committees on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year. The President shall provide for periodic discussions between designated representatives of the President and members of such committees regarding changes in the worldwide refugee situation, the progress of refugee admissions, and the possible need for adjustments in the allocation of admissions among refugees.

(2) As soon as possible after representatives of the President initiate appropriate consultation with respect to the number of refugee admissions under subsection (a) of this section or with respect to the admission of refugees in response to an emergency refugee situation under subsection (b) of this section, the Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of such consultation.

(3)(A) After the President initiates appropriate consultation prior to making a determination under subsection (a) of this section, a hearing to review the proposed determination shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(B) After the President initiates appropriate consultation prior to making a determination, under subsection (b) of this section, that the number of refugee admissions should be increased because of an unforeseen emergency refugee situation, to the extent that time and the nature of the emergency refugee situation permit, a hearing to review the proposal to increase refugee admissions shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(e) "Appropriate consultation" defined

For purposes of this section, the term ''appropriate consultation'' means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

(1) A description of the nature of the refugee situation.

(2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.

(3) A description of the proposed plans for their movement and resettlement and the esti-

mated cost of their movement and resettlement.

(4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.

(5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.

(6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.

(7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

(June 27, 1952, ch. 477, title II, ch. 1, § 207, as added Mar. 17, 1980, Pub. L. 96–212, title II, § 201(b), 94 Stat. 103; amended Oct. 24, 1988, Pub. L. 100–525, § 9(h), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101–649, title I, § 104(b), title VI, § 603(a)(4), 104 Stat. 4985, 5082; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(1), 105 Stat. 1756.)

PRIOR PROVISIONS

A prior section 1157, act June 27, 1952, ch. 477, title II, ch. 1, § 207, 66 Stat. 181, which prohibited issuance of immigrant visas to other immigrants in lieu of immigrants excluded from admission, immigrants deported, immigrants failing to apply for admission to the United States, or immigrants found to be nonquota immigrants after having previously been found to be quota immigrants, was repealed by Pub. L. 89–236, § 7, Oct. 3, 1965, 79 Stat. 916.

AMENDMENTS

1991—Subsec. (c)(3). Pub. L. 102–232 substituted ''subparagraph (A)'' for ''subparagraphs (A)''.

1990—Subsec. (a)(4). Pub. L. 101–649, § 104(b), added par. (4).

Subsec. (c)(3). Pub. L. 101–649, § 603(a)(4), substituted ''(4), (5), and (7)(A)'' for ''(14), (15), (20), (21), (25), and (32)'' and ''(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3))'' for ''(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)''.

1988—Subsec. (c)(1). Pub. L. 100–525 substituted ''otherwise'' for ''otherwide''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendments made by that section [amending this section, sections 1159, 1161, 1187, 1188, 1254a, 1255a, and 1322 of this title, and provisions set out as notes under sections 1101 and 1255 of this title] are effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 104(b) of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(4) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section (with the exception of subsec. (c) which is effective Apr. 1, 1980) effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

ESTABLISHING CATEGORIES OF ALIENS FOR PURPOSES OF REFUGEE DETERMINATIONS

Pub. L. 101–167, title V, § 599D, Nov. 21, 1989, 103 Stat. 1261, as amended by Pub. L. 101–513, title V, § 598(a), Nov. 5, 1990, 104 Stat. 2063; Pub. L. 102–391, title V, § 582(a)(1), (b)(1), (c), Oct. 6, 1992, 106 Stat. 1686; Pub. L. 102–511, title IX, § 905(a), (b)(1), (c), Oct. 24, 1992, 106 Stat. 3356; Pub. L. 103–236, title V, § 512(1), Apr. 30, 1994, 108 Stat. 466, provided that:

''(a) IN GENERAL.—In the case of an alien who is within a category of aliens established under subsection (b), the alien may establish, for purposes of admission as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157], that the alien has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution.

''(b) ESTABLISHMENT OF CATEGORIES.—

''(1) For purposes of subsection (a), the Attorney General, in consultation with the Secretary of State and the Coordinator for Refugee Affairs, shall establish—

''(A) one or more categories of aliens who are or were nationals and residents of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion, and

''(B) one or more categories of aliens who are or were nationals and residents of Vietnam, Laos, or Cambodia and who share common characteristics that identify them as targets of persecution in such respective foreign state on such an account.

''(2)(A) Aliens who are (or were) nationals and residents of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who are Jews or Evangelical Christians shall be deemed a category of alien established under paragraph (1)(A).

''(B) Aliens who are (or were) nationals of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who are current members of, and demonstrate public, active, and continuous participation (or attempted participation) in the religious activities of, the Ukrainian Catholic Church or the Ukrainian Orthodox Church, shall be deemed a category of alien established under paragraph (1)(A).

''(C) Aliens who are (or were) nationals and residents of Vietnam, Laos, or Cambodia and who are members of categories of individuals determined, by the Attorney General in accordance with 'Immigration and Naturalization Service Worldwide Guidelines for Overseas Refugee Processing' (issued by the Immigration and Naturalization Service in August 1983) shall be deemed a category of alien established under paragraph (1)(B).

''(3) Within the number of admissions of refugees allocated for for [sic] each of fiscal years 1990, 1991, and 1992 for refugees who are nationals of the Soviet Union under section 207(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1157(a)(3)] and within the number of such admissions allocated for each of fiscal years 1993, 1994, 1995, and 1996 for refugees who are nationals of the independent states of the former Soviet Union, Estonia, Latvia, and Lithuania under such section, notwithstanding any other provision of law, the President shall allocate one thousand of such admissions for such fiscal year to refugees who are within the category of aliens described in paragraph (2)(B).

''(c) WRITTEN REASONS FOR DENIALS OF REFUGEE STATUS.—Each decision to deny an application for refu-

gee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial.

''(d) PERMITTING CERTAIN ALIENS WITHIN CATEGORIES TO REAPPLY FOR REFUGEE STATUS.—Each alien who is within a category established under this section and who (after August 14, 1988, and before the date of the enactment of this Act [Nov. 21, 1989]) was denied refugee status shall be permitted to reapply for such status. Such an application shall be determined taking into account the application of this section.

''(e) PERIOD OF APPLICATION.—

''(1) Subsections (a) and (b) shall take effect on the date of the enactment of this Act [Nov. 21, 1989] and shall only apply to applications for refugee status submitted before October 1, 1996.

''(2) Subsection (c) shall apply to decisions made after the date of the enactment of this Act and before October 1, 1996.

''(3) Subsection (d) shall take effect on the date of the enactment of this Act and shall only apply to reapplications for refugee status submitted before October 1, 1996.''

[Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.]

EL SALVADORAN REFUGEES

Pub. L. 97–113, title VII, § 731, Dec. 29, 1981, 95 Stat. 1557, provided that: ''It is the sense of the Congress that the administration should continue to review, on a case-by-case basis, petitions for extended voluntary departure made by citizens of El Salvador who claim that they are subject to persecution in their homeland, and should take full account of the civil strife in El Salvador in making decisions on such petitions.''

TIME FOR DETERMINATIONS BY PRESIDENT FOR FISCAL YEAR 1980

Section 204(d)(1) of Pub. L. 96–212 provided that: ''Notwithstanding section 207(a) of the Immigration and Nationality Act (as added by section 201(b) of this title [subsec. (a) of this section], the President may make the determination described in the first sentence of such section not later than forty-five days after the date of the enactment of this Act [Mar. 17, 1980] for fiscal year 1980.''

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to this section concerning the admission and adjustment of status of refugees for particular fiscal years were contained in the following Presidential Determinations:

Presidential Determination No. 95–1, Oct. 1, 1994, 59 F.R. 52393.

Presidential Determination No. 94–1, Oct. 1, 1993, 58 F.R. 52213.

Presidential Determination No. 93–1, Oct. 2, 1992, 57 F.R. 47253.

Presidential Determination No. 92–2, Oct. 9, 1991, 56 F.R. 51633.

Presidential Determination No. 91–3, Oct. 12, 1990, 55 F.R. 41979.

Presidential Determination No. 90–2, Oct. 6, 1989, 54 F.R. 43035.

Presidential Determination No. 89–15, June 19, 1989, 54 F.R. 31493.

Presidential Determination No. 89–2, Oct. 5, 1988, 53 F.R. 45249.

Presidential Determination No. 88–16, May 20, 1988, 53 F.R. 21405.

Presidential Determination No. 88–01, Oct. 5, 1987, 52 F.R. 42073.

Presidential Determination No. 87–1, Oct. 17, 1986, 51 F.R. 39637.

Presidential Determination No. 83–2, Oct. 11, 1982, 47 F.R. 46483.

Presidential Determination No. 82–1, Oct. 10, 1981, 46 F.R. 55233.

Presidential Determination No. 80–28, Sept. 30, 1980, 45 F.R. 68365.

EX. ORD. NO. 12208. CONSULTATIONS ON THE ADMISSION OF REFUGEES

Ex. Ord. No. 12208, Apr. 15, 1980, 45 F.R. 25789, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Refugee Act of 1980 (P.L. 96–212; 8 U.S.C. 1101 note), the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are hereby delegated the following functions:

(a) To the Secretary of State and the Attorney General, or either of them, the functions of initiating and carrying out appropriate consultations with members of the Committees on the Judiciary of the Senate and of the House of Representatives for purposes of Sections 101(a)(42)(B) and 207(a), (b), (d), and (e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(42)(B) and 1157(a), (b), (d), and (e)).

(b) To the United States Coordinator for Refugee Affairs, the functions of reporting and carrying on periodic discussions under section 207(d)(1) of the Immigration and Nationality Act, as amended [8 U.S.C. 1157(d)(1)].

1–102. (a) The functions vested in the United States Coordinator for Refugee Affairs by Section 1–101(b) of this Order shall be carried out in consultation with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services.

(b) The United States Coordinator shall notify the Committees on the Judiciary of the Senate and of the House of Representatives that the Secretary of State and the Attorney General, or either of them, wish to consult for the purposes of Section 207(a), (b), or (d) of the Immigration and Nationality Act, as amended [8 U.S.C. 1157(a), (b), or (d)]. The United States Coordinator for Refugee Affairs shall, in accord with his responsibilities under Section 301 of the Refugee Act of 1980 (8 U.S.C. 1525), prepare for those Committees the information required by 207(e) of the Immigration and Nationality Act, as amended.

1–103. There are reserved to the President the following functions under the Immigration and Nationality Act, as amended [8 U.S.C. 1101 et seq.].

(a) To specify special circumstances for purposes of qualifying persons as refugees under Section 101(a)(42)(B) [8 U.S.C. 1101(a)(42)(B)].

(b) To make determinations under Sections 207(a)(1), 207(a)(2), 207(a)(3) and 207(b) [8 U.S.C. 1157(a)(1) to (3) and (b)].

(c) To fix the number of refugees to be admitted under Section 207(b).

1–104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1151, 1159, 1181, 1182, 1324b, 1522 of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1382j, 1436a.

§ 1158. Asylum procedure

(a) Establishment by Attorney General; coverage

The Attorney General shall establish a procedure for an alien physically present in the

United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(b) Termination of asylum by Attorney General; criteria

Asylum granted under subsection (a) of this section may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is no longer a refugee within the meaning of section 1101(a)(42)(A) of this title owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided.

(c) Status of spouse or child of alien granted asylum

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under subsection (a) of this section may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

(d) Aliens convicted of aggravated felony

An alien who has been convicted of an aggravated felony, notwithstanding subsection (a) of this section, may not apply for or be granted asylum.

(e) Employment authorization

An applicant for asylum is not entitled to employment authorization except as may be provided by regulation in the discretion of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 1, § 208, as added Mar. 17, 1980, Pub. L. 96–212, title II, § 201(b), 94 Stat. 105; amended Nov. 29, 1990, Pub. L. 101–649, title V, § 515(a)(1), 104 Stat. 5053; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130005(b), 108 Stat. 2028.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–322 added subsec. (e).
1990—Subsec. (d). Pub. L. 101–649 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 515(b) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 306(a)(13), Dec. 12, 1991, 105 Stat. 1752, provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for asylum made on or after such date.

''(2) The amendment made by subsection (a)(2) [amending section 1253 of this title] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for withholding of deportation made on or after such date.''

EFFECTIVE DATE

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

EXPEDITIOUS DEPORTATION FOR DENIED ASYLUM APPLICANTS

Section 130005 of Pub. L. 103–322 provided:

''(a) IN GENERAL.—The Attorney General may provide for the expeditious adjudication of asylum claims and the expeditious deportation of asylum applicants whose applications have been finally denied, unless the applicant remains in an otherwise valid nonimmigrant status.

''(b) EMPLOYMENT AUTHORIZATION.—[Amended this section.]

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

''(1) $64,000,000 for fiscal year 1995;
''(2) $90,000,000 for fiscal year 1996;
''(3) $93,000,000 for fiscal year 1997; and
''(4) $91,000,000 for fiscal year 1998.''

TIME FOR ESTABLISHMENT OF ASYLUM PROCEDURE BY ATTORNEY GENERAL

Section 204(d)(2) of Pub. L. 96–212 provided that: ''The Attorney General shall establish the asylum procedure referred to in section 208(a) of the Immigration and Nationality Act (as added by section 201(b) of this title) [subsec. (a) of this section] not later than June 1, 1980.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1324b of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1436a.

§ 1159. Adjustment of status of refugees

(a) Criteria and procedures applicable for admission as immigrant; effect of adjustment

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Service for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1226, and 1227 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before a special inquiry officer to be admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(b) Maximum number of adjustments; recordkeeping

Not more than 10,000 of the refugee admissions authorized under section 1157(a) of this title in any fiscal year may be made available by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for perma-

nent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c) of this section) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Applicability of other Federal statutory requirements

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(June 27, 1952, ch. 477, title II, ch. 1, § 209, as added Mar. 17, 1980, Pub. L. 96–212, title II, § 201(b), 94 Stat. 105; amended Nov. 29, 1990, Pub. L. 101–649, title I, § 104(a)(1), title VI, § 603(a)(4), 104 Stat. 4985, 5082; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(1), 105 Stat. 1756.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–232 substituted ''subparagraph (A)'' for ''subparagraphs (A)''.

1990—Subsec. (b). Pub. L. 101–649, § 104(a)(1), substituted ''10,000'' for ''five thousand''.

Subsec. (c). Pub. L. 101–649, § 603(a)(4), substituted ''(4), (5), and (7)(A)'' for ''(14), (15), (20), (21), (25), and (32)'' and ''(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3))'' for ''(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 104(a)(2) of Pub. L. 101–649 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1991 and the President is authorized, without the need for appropriate consultation, to increase the refugee determination previously made under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157] for fiscal year 1991 in order to make such amendment effective for such fiscal year.''

Amendment by section 603(a)(4) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE

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

WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES; ADJUSTMENT OF CERTAIN FORMER ASYLEES

Section 104(c), (d) of Pub. L. 101–649 provided that:

''(c) WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES.—The numerical limitation on the number of aliens whose status may be adjusted under section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall not apply to an alien described in subsection (d) or to an alien who has applied for adjustment of status under such section on or before June 1, 1990.

''(d) ADJUSTMENT OF CERTAIN FORMER ASYLEES.—

''(1) IN GENERAL.—Subject to paragraph (2), the provisions of section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall also apply to an alien—

''(A) who was granted asylum before the date of the enactment of this Act [Nov. 29, 1990] (regardless of whether or not such asylum has been terminated under section 208(b) of the Immigration and Nationality Act [8 U.S.C. 1158(b)]),

''(B) who is no longer a refugee because of a change in circumstances in a foreign state, and

''(C) who was (or would be) qualified for adjustment of status under section 209(b) of the Immigration and Nationality Act as of the date of the enactment of this Act but for paragraphs (2) and (3) thereof and but for any numerical limitation under such section.

''(2) APPLICATION OF PER COUNTRY LIMITATIONS.—The number of aliens who are natives of any foreign state who may adjust status pursuant to paragraph (1) in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)] and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of such Act.''

[Section 104(c), (d) of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1160, 1255a of this title.

§ 1160. Special agricultural workers

(a) Lawful residence

(1) In general

The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) Application period

The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after November 6, 1986.

(B) Performance of seasonal agricultural services and residence in the United States

The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) Admissible as immigrant

The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2) of this section.

(2) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) Group 1

Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) Group 2

In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) Numerical limitation

Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence

(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 1182(a)(6)(C)(i) of this title, or

(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2) of this section, or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an ''employment authorized'' endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general

Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 1101(a)(20) of this title), other than under any provision of the immigration laws.

(b) Applications for adjustment of status

(1) To whom may be made

(A) Within the United States

The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the United States

The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) of this section at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications

For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-

term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89–732 [8 U.S.C. 1255 note], or Public Law 95–145 [8 U.S.C. 1255 note].

(3) Proof of eligibility

(A) In general

An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) of this section through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) Documentation of work history

(i) An alien applying for adjustment of status under subsection (a)(1) of this section has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii) of this section).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) of this section by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities

Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information

Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) Confidentiality of information

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a determination under subparagraph[1] (a)(3)(B), or for enforcement of paragraph (7).[2]

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Penalties for false statements in applications

(A) Criminal penalty

Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(B) Exclusion

An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 1182(a)(6)(C)(i) of this title.

(c) Waiver of numerical limitations and certain grounds for exclusion

(1) Numerical limitations do not apply

The numerical limitations of sections 1151 and 1152 of this title shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion

In the determination of an alien's admissibility under subsection (a)(1)(C) of this section—

(A) Grounds of exclusion not applicable

The provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

Except as provided in clause (ii), the Attorney General may waive any other provi-

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

[2] So in original. The period probably should be a comma.

sion of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived

The following provisions of section 1182(a) of this title may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (4) (relating to aliens likely to become public charges).

(III) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof.

(C) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(4) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary stay of exclusion or deportation and work authorization for certain applicants

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) of this section and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) of this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit.

(2) During application period

The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) of this section during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit.

(3) Use of application fees to offset program costs

No application fees collected by the Service pursuant to this subsection may be used by the Service to offset the costs of the special agricultural worker legalization program until the Service implements the program consistent with the statutory mandate as follows:

(A) During the application period described in subsection (a)(1)(A) of this section the Service may grant temporary admission to the United States, work authorization, and provide an ''employment authorized'' endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) of this section at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this chapter.

(B) During the application period described in subsection (a)(1)(A) of this section any alien who has filed an application for adjustment of status within the United States as provided in subsection (b)(1)(A) of this section pursuant to the provision of 8 CFR section 210.1(j) is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

(e) Administrative and judicial review

(1) Administrative and judicial review

There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) Administrative review

(A) Single level of administrative appellate review

The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) Standard for review

Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) Judicial review

(A) Limitation to review of exclusion or deportation

There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 1105a of this title.

(B) Standard for judicial review

Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) Temporary disqualification of newly legalized aliens from receiving aid to families with dependent children

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) of this section, and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 1255a(h) of this title shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 1255a(h)(3) of this title to paragraph (1) is deemed a reference to the previous sentence.

(g) Treatment of special agricultural workers

For all purposes (subject to subsections (a)(5) and (f) of this section) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 1101(a)(20) of this title).

(h) "Seasonal agricultural services" defined

In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

(June 27, 1952, ch. 477, title II, ch. 1, §210, as added Nov. 6, 1986, Pub. L. 99–603, title III, §302(a)(1), 100 Stat. 3417; amended Dec. 22, 1987, Pub. L. 100–202, §101(a) [title II, §211], 101 Stat. 1329, 1329–18; Oct. 24, 1988, Pub. L. 100–525, §2(m), 102 Stat. 2613; Dec. 18, 1989, Pub. L. 101–238, §4, 103 Stat. 2103; Nov. 29, 1990, Pub. L. 101–649, title VI, §603(a)(5), 104 Stat. 5082; Dec. 12, 1991, Pub. L. 102–232, title III, §§307(j), 309(b)(6), 105 Stat. 1756, 1758; Oct. 25, 1994, Pub. L. 103–416, title II, §219(d), (z)(7), 108 Stat. 4316, 4318.)

REFERENCES IN TEXT

Public Law 89–732, referred to in subsec. (b)(2)(B), is Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended, which is set out as a note under section 1255 of this title.

Public Law 95–145, referred to in subsec. (b)(2)(B), is Pub. L. 95–145, Oct. 28, 1977, 91 Stat. 1223, as amended. Title I of Pub. L. 95–145 is set out as a note under section 1255 of this title. Title II of Pub. L. 95–145 amended Pub. L. 94–23, which was set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse, and was repealed by Pub. L. 96–212, title III, §312(c), Mar. 17, 1980, 94 Stat. 117.

The Social Security Act, referred to in subsec. (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–416, §219(d), inserted "the" before first reference to "Service" in introductory provisions.

Subsec. (d)(3)(B). Pub. L. 103–416, §219(z)(7), made technical correction to Pub. L. 102–232, §309(b)(6)(F). See 1991 Amendment note below.

1991—Subsec. (b)(7)(B). Pub. L. 102–232, §307(j), substituted "section 1182(a)(6)(C)(i)" for "section 1182(a)(19)".

Subsec. (d)(3). Pub. L. 102–232, §309(b)(6)(A)–(C), realigned margins of par. (3) and its subparagraphs, and in introductory provisions substituted "Service" for "the Immigration and Naturalization Service (INS)" and "Service" for "INS" in two places.

Subsec. (d)(3)(A). Pub. L. 102–232, §309(b)(6)(D), (E), substituted "period described in" for "period as defined in" and "Service" for "INS", and made technical amendment to reference to this chapter involving corresponding provision of original act.

Subsec. (d)(3)(B). Pub. L. 102–232, §309(b)(6)(F), as amended by Pub. L. 103–416, §219(z)(7), substituted "described in subsection (a)(1)(A)" for "as defined in subsection (a)(B)(1)(B)".

Pub. L. 102–232, §309(b)(6)(G), made technical amendment to reference to subsection (b)(1)(A) of this section involving corresponding provision of original act.

1990—Subsec. (a)(3)(B)(i). Pub. L. 101–649, §603(a)(5)(A), substituted "1182(a)(6)(C)(i)" for "1182(a)(19)".

Subsec. (c)(2)(A). Pub. L. 101–649, §603(a)(5)(B), substituted "(5) and (7)(A)" for "(14), (20), (21), (25), and (32)".

Subsec. (c)(2)(B)(ii)(I). Pub. L. 101–649, §603(a)(5)(C), substituted "Paragraphs (2)(A) and (2)(B)" for "Paragraph (9) and (10)".

Subsec. (c)(2)(B)(ii)(II). Pub. L. 101–649, §603(a)(5)(D), substituted "(4)" for "(15)".

Subsec. (c)(2)(B)(ii)(III). Pub. L. 101–649, §603(a)(5)(E), substituted "(2)(C)" for "(23)".

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 101–649, §603(a)(5)(F), substituted "Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof" for "Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations)".

Subsec. (c)(2)(B)(ii)(V). Pub. L. 101–649, §603(a)(5)(G), struck out subcl. (V) which referred to par. (33).

Subsec. (c)(2)(C). Pub. L. 101–649, §603(a)(5)(H), substituted "1182(a)(4)" for "1182(a)(15)".

1989—Subsec. (a)(3). Pub. L. 101–238, §4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(6)(A). Pub. L. 101–238, §4(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),".

1988—Subsec. (g). Pub. L. 100–525 substituted "subsections (a)(5) and (f)" for "subsections (b)(3) and (f)".

1987—Subsec. (d)(3). Pub. L. 100–202 added par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(7) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

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

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(j) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a)(5) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to applications for adjustment of status made on or after June 1, 1991, see section 601(e)(2) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

COMMISSION ON AGRICULTURAL WORKERS

Section 304 of Pub. L. 99–603, as amended by Pub. L. 101–649, title VII, § 704, Nov. 29, 1990, 104 Stat. 5086; Pub. L. 102–232, title III, § 308(c), Dec. 12, 1991, 105 Stat. 1757, provided that:

''(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission on Agricultural Workers (hereinafter in this section referred to as the 'Commission'), to be composed of 12 members—

''(A) six to be appointed by the President,

''(B) three to be appointed by the Speaker of the House of Representatives, and

''(C) three to be appointed by the President pro tempore of the Senate.

''(2) In making appointments under paragraph (1)(A), the President shall consult—

''(A) with the Attorney General in appointing two members,

''(B) with the Secretary of Labor in appointing two members, and

''(C) with the Secretary of Agriculture in appointing two members.

''(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

''(4) Members shall be appointed to serve for the life of the Commission.

''(b) FUNCTIONS OF COMMISSION.—(1) The Commission shall review the following:

''(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

''(B) The extent to which aliens who have obtained lawful permanent or temporary resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section 210A of the Immigration and Nationality Act [8 U.S.C. 1161] perform 90 mandays of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

''(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

''(D) The extent to which the agricultural industry relies on the employment of a temporary workforce.

''(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act [8 U.S.C. 1161(b)].

''(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

''(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

''(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

''(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

''(2) The Commission shall conduct an overall evaluation of the special agricultural worker provisions, including the process for determining whether or not an agricultural labor shortage exists.

''(c) REPORT TO CONGRESS.—The Commission shall report to the Congress not later than six years after the date of the enactment of this Act [Nov. 6, 1986] on its reviews under subsection (b). The Commission shall include in its report recommendations for appropriate changes that should be made in the special agricultural worker provisions.

''(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the minimum annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay.

''(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

''(e) MEETINGS OF COMMISSION.—(1) Five members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

''(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

''(3) The Commission shall meet at the call of the Chairman or a majority of its members.

''(f) STAFF.—(1) The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment and compensation and other conditions of service in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS–18 of the General Schedule.

''(g) AUTHORITY OF COMMISSION.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

''(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

''(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

''(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(h) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

''(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

''(i) TERMINATION DATE.—The Commission shall cease to exist at the end of the 75-month period beginning with the month after the month in which this Act is enacted [November 1986].

''(j) DEFINITIONS.—In this section:

''(1) The term 'employer sanctions' means the provisions of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a].

''(2) The term 'legalization program' refers to the provisions of section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

''(3) The term 'seasonal agricultural services' has the meaning given such term in section 210(h) of the Immigration and Nationality Act [8 U.S.C. 1160(h)].

''(4) The term 'special agricultural worker provisions' refers to sections 210 and 210A of the Immigration and Nationality Act [8 U.S.C. 1160, 1161].''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1182, 1324a, 1324b of this title; title 42 sections 408, 602, 672.

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

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

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as an Effective Date of 1994 Amendment note under section 1101 of this title.

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

§ 1181. Admission of immigrants into the United States

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

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

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

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

(c) Nonapplicability to aliens admitted as refugees

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

CROSS REFERENCES

Definition of alien, application for admission, Attorney General, immigrant, immigrant visa, lawfully admitted for permanent residence, national, parent, passport, and United States, see section 1101 of this title.
Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1182, 1230 of this title.

§ 1182. Excludable aliens

(a) Classes of excludable aliens

Except as otherwise provided in this chapter, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:

(1) Health-related grounds

(A) In general

Any alien—

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

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

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

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

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

is excludable.

(B) Waiver authorized

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

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

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

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

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

is excludable.

(ii) Exception

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

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

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

(B) Multiple criminal convictions

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

(C) Controlled substance traffickers

Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is excludable.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in

prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, entry, or adjustment of status,

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

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

is excludable.

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

Any alien—

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

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

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

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

is excludable.

(F) Waiver authorized

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

(3) Security and related grounds

(A) In general

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

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

(ii) any other unlawful activity, or

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

is excludable.

(B) Terrorist activities

(i) In general

Any alien who—

(I) has engaged in a terrorist activity, or

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is likely to engage after entry in any terrorist activity (as defined in clause (iii)),

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

(ii) "Terrorist activity" defined

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

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

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

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

(IV) An assassination.

(V) The use of any—

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

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

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

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

(iii) "Engage in terrorist activity" defined

As used in this chapter, the term ''engage in terrorist activity'' means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

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

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

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

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

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

(C) Foreign policy

(i) In general

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

(ii) Exception for officials

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

(iii) Exception for other aliens

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

(iv) Notification of determinations

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

(D) Immigrant membership in totalitarian party

(i) In general

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

(ii) Exception for involuntary membership

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

(iii) Exception for past membership

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

(I) the membership or affiliation terminated at least—

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

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

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

(iv) Exception for close family members

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

(E) Participants in Nazi persecutions or genocide

(i) Participation in Nazi persecutions

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

(I) the Nazi government of Germany,

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

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

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

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

(ii) Participation in genocide

Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is excludable.

(4) Public charge

Any alien who, in the opinion of the consular officer at the time of application for a

visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable.

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general

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

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

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

(ii) Certain aliens subject to special rule

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

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

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

(B) Unqualified physicians

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

(C) Application of grounds

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

(6) Illegal entrants and immigration violators

(A) Aliens previously deported

Any alien who has been excluded from admission and deported and who again seeks admission within one year of the date of such deportation is excludable, unless prior to the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien's reapplying for admission.

(B) Certain aliens previously removed

Any alien who—

(i) has been arrested and deported,

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

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

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

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

(C) Misrepresentation

(i) In general

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

(ii) Waiver authorized

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

(D) Stowaways

Any alien who is a stowaway is excludable.

(E) Smugglers

(i) In general

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

(ii) Special rule in the case of family reunification

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

(iii) Waiver authorized

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

(F) Subject of civil penalty

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

(7) Documentation requirements

(A) Immigrants

(i) In general

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

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

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

is excludable.

(ii) Waiver authorized

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

(B) Nonimmigrants

(i) In general

Any nonimmigrant who—

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

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

is excludable.

(ii) General waiver authorized

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

(iii) Guam visa waiver

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

(iv) Visa waiver pilot program

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

(8) Ineligible for citizenship

(A) In general

Any immigrant who is permanently ineligible to citizenship is excludable.

(B) Draft evaders

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

(9) Miscellaneous

(A) Practicing polygamists

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

(B) Guardian required to accompany excluded alien

Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 1227(e) of this title, whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.

(C) International child abduction

(i) In general

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

(ii) Exception

Clause (i) shall not apply so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction.

(b) Notices of denials

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

(1) states the determination, and

(2) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.

(c) Nonapplicability of subsection (a)

Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the At-

torney General to exercise the discretion vested in him under section 1181(b) of this title. The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.

(d) Temporary admission of nonimmigrants

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

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

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

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1228(c) of this title.

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

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

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

(7) The provisions of subsection (a) of this section (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso. Any alien described in this paragraph, who is excluded from admission to the United States, shall be immediately deported in the manner provided by section 1227(a) of this title.

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

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

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

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

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(H) or section 1101(a)(15)(L) of this title until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 1184(k) of this title: *And provided further*, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

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

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

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

The Attorney General may waive the application of—

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

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

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

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

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

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

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

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

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

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

(iii) the alien has been rehabilitated; or

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

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

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involv-

ing torture, or an attempt or conspiracy to commit murder or a criminal act involving torture.

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

The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C) of this section—

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

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

(j) Limitation on immigration of foreign medical graduates

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

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

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

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

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

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

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

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

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title unless—

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

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

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of

medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) The Director of the United States Information Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program.

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

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

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

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

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

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

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

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

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

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

(m) Requirements for admission of nonimmigrant nurses during five-year period

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

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

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

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

(2)(A) The attestation referred to in section 1101(a)(15)(H)(i)(a) of this title is an attestation as to the following:

(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

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

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

(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 1101(a)(15)(H)(i)(a) of this title, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial dis-

ruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Notwithstanding the previous sentence, a facility that lays off a registered nurse other than a staff nurse still meets clause (i) if, in its attestation under this subparagraph, the facility has attested that it will not replace the nurse with a nonimmigrant described in section 1101(a)(15)(H)(i)(a) of this title (either through promotion or otherwise) for a period of 1 year after the date of the lay off. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before Dec. 18, 1989. In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.

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

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

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

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

(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

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

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

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

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

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

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

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

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

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

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

(3) The Secretary of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individuals concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.

(4) The period of admission of an alien under section 1101(a)(15)(H)(i)(a) of this title shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).

(5) For purposes of this subsection and section 1101(a)(15)(H)(i)(a) of this title, the term ''facility'' includes an employer who employs registered nurses in a home setting.

(n) Labor condition application

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

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title wages that are at least—

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

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

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

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

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

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

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

(ii) if there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment.

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

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101(a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application.

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

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

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

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

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

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to

provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(*o*) Requirements for receipt of immigrant visa within ninety days following departure

An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

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

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

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

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

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

(June 27, 1952, ch. 477, title II, ch. 2, § 212, 66 Stat. 182; July 18, 1956, ch. 629, title III, § 301 (a), 70 Stat. 575; July 7, 1958, Pub. L. 85–508, § 23, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86–3, § 20(b), 73 Stat. 13; July 14, 1960, Pub. L. 86–648, § 8, 74 Stat. 505; Sept. 21, 1961, Pub. L. 87–256, § 109(c), 75 Stat. 535; Sept. 26, 1961, Pub. L. 87–301, §§ 11–15, 75 Stat. 654, 655; Oct. 3, 1965, Pub. L. 89–236, §§ 10, 15, 79 Stat. 917, 919; Apr. 7, 1970, Pub. L. 91–225, § 2, 84 Stat. 116; Oct. 12, 1976, Pub. L. 94–484, title VI, § 601(a), (c), (d), 90 Stat. 2300, 2301; Oct. 20, 1976, Pub. L. 94–571, §§ 5, 7(d), 90 Stat. 2705, 2706; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(q)(1), (2), 91 Stat. 394; Oct. 30, 1978, Pub. L. 95–549, title I, §§ 101, 102, 92 Stat. 2065; Sept. 27, 1979, Pub. L. 96–70, title III, § 3201(b), 93 Stat. 497; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(d), (f), 94 Stat. 107; Dec. 17, 1980, Pub. L. 96–538, title IV, § 404, 94 Stat. 3192; Dec. 29, 1981, Pub. L. 97–116, §§ 4, 5(a)(1), (2), (b), 18(e), 95 Stat. 1611, 1612, 1620; Oct. 5, 1984, Pub. L. 98–454, title VI, § 602[(a)], 98 Stat. 1737; Oct. 12, 1984, Pub. L. 98–473, title II, § 220(a), 98 Stat. 2028; Aug. 27, 1986, Pub. L. 99–396, § 14(a), 100 Stat. 842; Oct. 27, 1986, Pub. L. 99–570, title I, § 1751(a), 100 Stat. 3207–47; Nov. 10, 1986, Pub. L. 99–639, § 6(a), 100 Stat. 3543; Nov. 14, 1986, Pub. L. 99–653, § 7(a), 100 Stat. 3657; Dec. 22, 1987, Pub. L. 100–204, title VIII, § 806(c), 101 Stat. 1399; Oct. 24, 1988, Pub. L. 100–525, §§ 3(1)(A), 7(c)(1), (3), 8(f), 9(i), 102 Stat. 2614, 2616, 2617, 2620; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7349(a), 102 Stat. 4473; Dec. 18, 1989, Pub. L. 101–238, § 3(b), 103 Stat. 2100; Feb. 16, 1990, Pub. L. 101–246, title I, § 131(a), (c), 104 Stat. 31; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(e)(1), (f)(2)(B), title II, §§ 202(b), 205(c)(3), title V, §§ 511(a), 514(a), title VI, § 601(a), (b), (d), 104 Stat. 5011, 5012, 5014, 5020, 5052, 5053, 5067, 5075; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 302(e)(6), (9), 303(a)(5)(B), (6), (7)(B), 306(a)(10), (12), 307(a)–(g), 309(b)(7), 105 Stat. 1746, 1747, 1751, 1753–1755, 1759; June 10, 1993, Pub. L. 103–43, title XX, § 2007(a), 107 Stat. 210; Aug. 26, 1994, Pub. L. 103–317, title V, § 506(a), 108 Stat. 1765; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(b)(1), 108 Stat. 2024; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 203(a), 219(e), (z)(1), (5), 220(a), 108 Stat. 4311, 4316, 4318, 4319.)

AMENDMENT OF SECTION

For termination of amendment by section 506(c) of Pub. L. 103–317, see Effective and Termination Dates of 1994 Amendments note below.

REFERENCES IN TEXT

Section 301 of the Immigration Act of 1990, referred to in subsecs. (a)(6)(E)(ii) and (*o*)(2)(C), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.

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

The effective date of this subsection, referred to in subsec. (j)(2), is ninety days after Oct. 12, 1976.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (*o*)(2), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of this title.

AMENDMENTS

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

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

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

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

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

Subsec. (e). Pub. L. 103–416, § 220(a), in first proviso, inserted ''(or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent)'' after ''interested United States Government agency'' and ''except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 1184(k) of this title'' after ''public interest''.

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

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

Subsec. (*o*). Pub. L. 103–317, § 506(a), (c), temporarily added subsec. (*o*). See Effective and Termination Dates of 1994 Amendments note below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (d)(4). Pub. L. 100–525, § 8(f), added Pub. L. 99–653, § 7(d)(2). See 1986 Amendment note below.

Subsec. (e). Pub. L. 100–525, § 9(i)(2), substituted ''Director of the United States Information Agency'' for ''Secretary of State'' the first place appearing, and ''Director'' for ''Secretary of State'' each subsequent place appearing.

Subsec. (g). Pub. L. 100–525, § 9(i)(3), substituted ''Secretary of Health and Human Services'' for ''Surgeon General of the United States Public Health Service'' wherever appearing.

Subsec. (h). Pub. L. 100–525, § 9(i)(4), substituted ''paragraph (9)'' for ''paragraphs (9)''.

Subsec. (i). Pub. L. 100–525, § 7(c)(3), added Pub. L. 99–639, § 6(b). See 1986 Amendment note below.

Subsec. (*l*). Pub. L. 100–525, § 3(1)(A), made technical correction to Pub. L. 99–396, § 14(a). See 1986 Amendment note below.

1987—Subsec. (a)(23). Pub. L. 100–204 amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21); or any alien who the consular officer or immigration officer know or have reason to believe is or has been an illicit trafficker in any such controlled substance;''.

1986—Subsec. (a)(19). Pub. L. 99–639, § 6(a), as amended by Pub. L. 100–525, § 7(c)(1), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;''.

Subsec. (a)(23). Pub. L. 99–570 substituted ''any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)'' for ''any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, or isonipecaine or any addiction-forming or addiction-sustaining opiate'' and ''any such controlled substance'' for ''any of the aforementioned drugs''.

Subsec. (a)(24). Pub. L. 99–653 struck out par. (24) which related to aliens seeking admission from foreign contiguous territory or adjacent islands who arrived there on vessel or aircraft of nonsignatory line or noncomplying transportation line and have not resided there at least two years subsequent to such arrival, except for aliens described in section 1101(a)(27)(A) of this title and aliens born in Western Hemisphere, and further provided that no paragraph following par. (24) shall be redesignated as result of this amendment.

Subsec. (d)(4). Pub. L. 99–653, § 7(d)(2), as added by Pub. L. 100–525, § 8(f), substituted ''section 1228(c) of this title'' for ''section 1228(d) of this title''.

Subsec. (i). Pub. L. 99–639, § 6(b), as added by Pub. L. 100–525, § 7(c)(3), inserted ''or other benefit under this chapter'' after ''United States,''.

Subsec. (*l*). Pub. L. 99–396, § 14(a), as amended by Pub. L. 100–525, § 3(1)(A), amended subsec. (*l*) generally, designating existing provisions as par. (1) and redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, inserting in par. (1) as so designated reference to consultation with the Governor of Guam, inserting in subpar. (B) as so redesignated reference to

the welfare, safety, and security of the territories and commonwealths of the United States, and adding pars. (2) and (3).

1984—Subsec. (a)(9). Pub. L. 98–473 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Any alien who would be excludable because of a conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense;''.

Subsec. (*l*). Pub. L. 98–454 added subsec. (*l*).

1981—Subsec. (a)(17). Pub. L. 97–116, § 4(1), inserted ''and who seek admission within five years of the date of such deportation or removal,'' after ''section 1252(b) of this title,''.

Subsec. (a)(32). Pub. L. 97–116, §§ 5(a)(1), 18(e)(1), substituted ''in the United States)'' for ''in the United States'' and inserted provision that for purposes of this paragraph an alien who is a graduate of a medical school be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date.

Subsec. (d)(6). Pub. L. 97–116, § 4(2), struck out provision that the Attorney General make a detailed report to Congress in any case in which he exercises his authority under par. (3) of this subsection on behalf of any alien excludable under subsec. (a)(9), (10), and (28) of this section.

Subsec. (h). Pub. L. 97–116, § 4(3), substituted ''paragraphs (9), (10), or (12) of subsection (a) of this section or paragraph (23) of such subsection as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana'' for ''paragraphs (9), (10), or (12) of subsection (a) of this section''.

Subsec. (j)(1). Pub. L. 97–116, § 5(b)(1), inserted ''as follows'' after ''training are''.

Subsec. (j)(1)(A). Pub. L. 97–116, § 5(b)(3), (4), substituted ''Secretary of Education'' for ''Commissioner of Education'' and a period for the semicolon at the end.

Subsec. (j)(1)(B). Pub. L. 97–116, § 5(a)(2), (b)(3), (7)(A), (B), substituted ''Secretary of Education'' for ''Commissioner of Education'', ''(ii)(I)'' for ''(ii)'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''; inserted ''(II)'' before ''has competency'', ''(III)'' before ''will be able to adapt'', and ''(IV)'' before ''has adequate prior education''; and inserted provision that for purposes of this subparagraph an alien who is a graduate of a medical school be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date.

Subsec. (j)(1)(C). Pub. L. 97–116, § 5(b)(2)–(4), struck out ''(including any extension of the duration thereof under subparagraph (D))'' after ''to the United States'' and substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' and a period for ''; and'' at end.

Subsec. (j)(1)(D). Pub. L. 97–116, § 5(b)(5), substituted provision permitting aliens coming to the United States to study in medical residency training programs to remain until the typical completion date of the program, as determined by the Director of the International Communication Agency at the time of the alien's entry, based on criteria established in coordination with the Secretary of Health and Human Services, except that such duration be limited to seven years unless the alien demonstrates to the satisfaction of the Director that the country to which the alien will return after such specialty education has exceptional need for an individual trained in such specialty, and that the alien may change enrollment in programs once within two years after coming to the United States if approval of the Director is obtained and further commitments are obtained from the alien to assure that, upon completion of the program, the alien would return to his country for provision limiting the duration of the alien's participation in the program for which he is coming to the United States to not more than 2 years, with a possible one year extension.

Subsec. (j)(1)(E). Pub. L. 97–116, § 5(b)(6), added subpar. (E).

Subsec. (j)(2)(A). Pub. L. 97–116, § 5(b)(7)(C)–(F), substituted ''and (B)(ii)(I)'' for ''and (B)'' and ''1983'' for ''1981''; inserted ''(i) the Secretary of Health and Human Services determines, on a case-by-case basis, that'' after ''if''; and added cl. (ii).

Subsec. (j)(2)(B). Pub. L. 97–116, § 5(b)(7)(G), inserted provision directing Secretary of Health and Human Services, in coordination with Attorney General and Director of the International Communication Agency, to monitor the issuance of waivers under subpar. (A) and the needs of the communities, with respect to which such waivers are issued, to assure that quality medical care is provided and to review each program with such a waiver to assure that the plan described in subpar. (A)(ii) is being carried out and that the participants in such program are being provided appropriate supervision in their medical education and training.

Subsec. (j)(2)(C). Pub. L. 97–116, § 5(b)(7)(G), added subpar. (C).

Subsec. (j)(3). Pub. L. 97–116, § 5(b)(8), added par. (3).

Subsec. (k). Pub. L. 97–116, § 18(e)(2), added subsec. (k).

1980—Subsec. (a)(14), (32). Pub. L. 96–212, § 203(d), substituted ''1153(a)(7)'' for ''1153(a)(8)''.

Subsec. (d)(5). Pub. L. 96–212, § 203(f), redesignated existing provisions as subpar. (A), inserted provision excepting subpar. (B), and added subpar. (B).

Subsec. (j)(2)(A). Pub. L. 96–538 substituted ''December 30, 1981'' for ''December 30, 1980''.

1979—Subsec. (d)(9), (10). Pub. L. 96–70 added pars. (9) and (10).

1978—Subsec. (a)(33). Pub. L. 95–549, § 101, added par. (33).

Subsec. (d)(3). Pub. L. 95–549, § 102, inserted reference to par. (33) in parenthetical text.

1977—Subsec. (a)(32). Pub. L. 95–83, § 307(q)(1), inserted ''not accredited by a body or bodies approved for the purpose by the Commissioner of Education (regardless of whether such school of medicine is in the United States'' after ''graduates of a medical school'' in first sentence and struck out second sentence exclusion of aliens provision with respect to application to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of the United States citizens or of aliens lawfully admitted for permanent residence).

Subsec. (j)(1)(B). Pub. L. 95–83, § 307(q)(2)(A), inserted cl. (i) and designated existing provisions as cl. (ii).

Subsec. (j)(1)(C). Pub. L. 95–83, § 307(q)(2)(B), substituted ''that there is a need in that country for persons with the skills the alien will acquire in such education or training'' for ''that upon such completion and return, he will be appointed to a position in which he will fully utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country''.

Subsec. (j)(1)(D). Pub. L. 95–83, § 307(q)(2)(C), substituted ''at the written request'' for ''at the request'', struck out cl. ''(i) such government provides a written assurance, satisfactory to the Secretary of Health, Education, and Welfare, that the alien will, at the end of such extension, be appointed to a position in which he will fully utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country,'', and redesignated as cls. (i) and (ii) former cls. (ii) and (iii).

Subsec. (j)(2)(A). Pub. L. 95–83, §307(q)(2)(D), substituted ''(A) and (B)'' for ''(A) through (D)''.

1976—Subsec. (a)(14). Pub. L. 94–571, §5, in revising par. (14), inserted in cl. (A) ''(or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts)'' and struck out ''in the United States'' after ''sufficient workers'' and ''destined'' before ''to perform'' and introductory provision of last sentence making exclusion of aliens under par. (14) applicable to special immigrants defined in former provision of section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence).

Subsec. (a)(24). Pub. L. 94–571, §7(d), substituted in parenthetical text ''section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere'' for ''section 1101(a)(27)(A) and (B) of this title''.

Subsec. (a)(32). Pub. L. 94–484, §601(a), added par. (32).

Subsec. (e). Pub. L. 94–484, §601(c), substituted ''(i) whose'' for ''whose (i)'', and ''residence, (ii)'' for ''residence, or (ii)'', inserted ''or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training,'' before ''shall be eligible'', and inserted '', except in the case of an alien described in clause (iii),'' in second proviso.

Subsec. (j). Pub. L. 94–484, §601(d), added subsec. (j).

1970—Subsec. (e). Pub. L. 91–225 inserted cls. (i) and (ii) and reference to eligibility for nonimmigrant visa under section 1101(a)(15)(L) of this title, provided for waiver of requirement of two-year foreign residence abroad where alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion or where the foreign country of alien's nationality or last residence has furnished a written statement that it has no objection to such waiver for such alien, and struck out alternative provision for residence and physical presence in another foreign country and former first and final provisos which read as follows: ''Provided, That such residence in another foreign country shall be considered to have satisfied the requirements of this subsection if the Secretary of State determines that it has served the purpose and the intent of the Mutual Educational and Cultural Exchange Act of 1961'' and ''And provided further, That the provisions of this subchapter shall apply also to those persons who acquired exchange visitor status under the United States Information and Educational Exchange Act of 1948, as amended.''

1965—Subsec. (a)(1). Pub. L. 89–236, §15(a), substituted ''mentally retarded'' for ''feebleminded''.

Subsec. (a)(4). Pub. L. 89–236, §15(b), substituted ''or sexual deviation'' for ''epilepsy''.

Subsec. (a)(14). Pub. L. 89–236, §10(a), inserted requirement that Secretary of Labor make an affirmative finding that any alien seeking to enter the United States as a worker, skilled or otherwise, will not replace a worker in the United States nor will the employment of the alien adversely affect the wages and working conditions of individuals in the United States similarly employed, and made the requirement applicable to special immigrants (other than the parents, spouses, and minor children of U.S. citizens or permanent resident aliens), preference immigrants described in sections 1153(a)(3) and 1153(a)(6) of this title, and nonpreference immigrants.

Subsec. (a)(20). Pub. L. 89–236, §10(b), substituted ''1181(a)'' for ''1181(e)''.

Subsec. (a)(21). Pub. L. 89–236, §10(c), struck out ''quota'' before ''immigrant''.

Subsec. (a)(24). Pub. L. 89–236, §10(d), substituted ''other than aliens described in section 1101(a)(27)(A) and (B)'' for ''other than those aliens who are native-born citizens of countries enumerated in section 1101(a)(27) of this title and aliens described in section 1101(a)(27)(B) of this title''.

Subsec. (g). Pub. L. 89–236, §15(c), redesignated subsec. (f) of sec. 212 of the Immigration and Nationality Act as subsec. (g) thereof, which for purposes of codification had already been designated as subsec. (g) of this section and granted the Attorney General authority to admit any alien who is the spouse, unmarried son or daughter, minor adopted child, or parent of a citizen or lawful permanent resident and who is mentally retarded or has a past history of mental illness under the same conditions as authorized in the case of such close relatives afflicted with tuberculosis.

Subsecs. (h), (i). Pub. L. 89–236, §15(c), redesignated subsecs. (g) and (h) of sec. 212 of the Immigration and Nationality Act as subsecs. (h) and (i) respectively thereof, which for purposes of codification had already been designated as subsecs. (h) and (i) of this section.

1961—Subsec. (a)(6). Pub. L. 87–301, §11, struck out references to tuberculosis and leprosy.

Subsec. (a)(9). Pub. L. 87–301, §13, authorized admission of aliens who would be excluded because of conviction of a violation classifiable as an offense under section 1(3) of title 18, by reason of punishment actually imposed, or who admit commission of an offense classifiable as a misdemeanor under section 1(2) of title 18, by reason of punishment which might have been imposed, if otherwise admissible and provided the alien has committed, or admits to commission of, only one such offense.

Subsecs. (e), (f). Pub. L. 87–256 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsecs. (g) to (i). Pub. L. 87–301, §§12, 14, 15, added subsecs. (f) to (h), which for purposes of codification have been designated as subsecs. (g) to (i).

1960—Subsec. (a). Pub. L. 86–648 inserted ''or marihuana'' after ''narcotic drugs'' in cl. (23).

1959—Subsec. (d). Pub. L. 86–3 struck out provisions from cl. (7) which related to aliens who left Hawaii and to persons who were admitted to Hawaii under section 8(a)(1) of the act of March 24, 1934, or as nationals of the United States.

1958—Subsec. (d)(7). Pub. L. 85–508 struck out provisions which related to aliens who left Alaska.

1956—Subsec. (a)(23). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

Change of Name

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Effective and Termination Dates of 1994 Amendments

Section 203(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this Act [Oct. 25, 1994].''

Amendment by section 219(e) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as an Effective Date of 1994 Amendment note under section 1101 of this title.

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(1), (5) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

Section 220(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1184 of this title] shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(J)], or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act [Oct. 25, 1994] and before June 1, 1996.''

Section 506(c) of Pub. L. 103–317 provided that: ''The provisions of these amendments to the Immigration and Nationality Act [amending this section and section

1255 of this title] shall take effect on October 1, 1994 and shall cease to have effect on October 1, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2007(b) of Pub. L. 103–43 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 30 days after the date of the enactment of this Act [June 10, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by sections 302(e)(6), 303(a)(5)(B), (6), (7)(B), 306(a)(10), (12), 307(a)–(g) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 302(e)(9) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 162(e)(1) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, with general transition provisions and admissibility standards, see section 161(a), (c), (d) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 162(f)(2)(B) of Pub. L. 101–649 applicable as though included in the enactment of Pub. L. 101–238, see section 162(f)(3) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Section 202(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1184 of this title] shall take effect 60 days after the date of the enactment of this Act [Nov. 29, 1990].''

Amendment by section 205(c)(3) of Pub. L. 101–649 effective Oct. 1, 1991, see section 231 of Pub. L. 101–649, set out as a note under section 1101 of this title.

Section 511(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring after the date of the enactment of this Act [Nov. 29, 1990].''

Section 514(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring on or after January 1, 1991.''

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(d) of Pub. L. 101–238 provided that: ''The amendments made by the previous provisions of this section [amending this section and section 1101 of this title] shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of this Act [Dec. 18, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 7349(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any alien convicted of an aggravated felony who seeks admission to the United States on or after the date of the enactment of this Act [Nov. 18, 1988].''

Section 3 of Pub. L. 100–525 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–396.

Section 7(d) of Pub. L. 100–525 provided that: ''The amendments made by this section [amending this section, sections 1186a and 1255 of this title, and provisions set out as a note below] shall be effective as if they were included in the enactment of the Immigration Marriage Fraud Amendments of 1986 [Pub. L. 99–639].''

Amendment by section 8(f) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

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

Section 6(c), formerly 6(b), of Pub. L. 99–639, as redesignated and amended by Pub. L. 100–525, §7(c)(2), Oct. 24, 1988, 102 Stat. 2616, provided that: ''The amendment made by this section [amending this section] shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act [Nov. 10, 1986] based on fraud or misrepresentations occurring before, on, or after such date.''

Section 1751(c) of Pub. L. 99–570 provided that: ''The amendments made by the [sic] subsections (a) and (b) of this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this section [Oct. 27, 1986], and the amendments made by subsection (a) [amending this section] shall apply to aliens entering the United States after the date of the enactment of this section.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 5(c) of Pub. L. 97–116 provided that: ''The amendments made by paragraphs (2), (5), and (6) of subsection (b) [striking out ''including any extension of the duration thereof under subparagraph (D)'' in subsec. (j)(1)(C) of this section, amending subsec. (j)(1)(D) of this section, and enacting subsec. (j)(1)(E) of this section] shall apply to aliens entering the United States as exchange visitors (or otherwise acquiring exchange visitor status) on or after January 10, 1978.''

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, except as provided by section 5(c) of Pub. L. 97–116, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 203(d) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(f) of Pub. L. 96–212 applicable, except as otherwise provided, to aliens paroled into the United States on or after the sixtieth day after Mar. 17, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Sept. 27, 1979, see section 3201(d)(1) of Pub. L. 96–70, set out as a note under section 1101 of this title.

Section 3201(d)(2) of Pub. L. 96–70 provided that: ''Paragraph (9) of section 212(d) of the Immigration and Nationality Act [subsec. (d)(9) of this section], as added by subsection (b) of this section, shall cease to be effective at the end of the transition period [midnight Mar. 31, 1982, see section 3831 of Title 22, Foreign Relations and Intercourse].''

EFFECTIVE DATE OF 1976 AMENDMENTS

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

Amendment by section 601(d) of Pub. L. 94–484 applicable only on and after Jan. 10, 1978, notwithstanding

section 601(f) of Pub. L. 94–484, see section 602(d) of Pub. L. 94–484, as added by section 307(q)(3) of Pub. L. 95–83, set out as an Effective Date of 1977 Amendment note under section 1101 of this title.

Section 601(f) of Pub. L. 94–484 provided that: ''The amendments made by this section [amending this section and section 1101 of this title] shall take effect ninety days after the date of enactment of this section [Oct. 12, 1976].''

EFFECTIVE DATE OF 1965 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

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

CONSTRUCTION OF 1990 AMENDMENT

Section 302(e)(6) of Pub. L. 102–232 provided that: ''Paragraph (1) of section 162(e) of the Immigration Act of 1990 [Pub. L. 101–649, amending this section] is repealed, and the provisions of law amended by such paragraph are restored as though such paragraph had not been enacted.''

ASSISTANCE TO DRUG TRAFFICKERS

Pub. L. 103–447, title I, §107, Nov. 2, 1994, 108 Stat. 4695, provided that: ''The President shall take all reasonable steps provided by law to ensure that the immediate relatives of any individual described in section 487(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291f(a)), and the business partners of any such individual or of any entity described in such section, are not permitted entry into the United States, consistent with the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).''

PROCESSING OF VISAS FOR ADMISSION TO UNITED STATES

Pub. L. 103–236, title I, §140(c), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103–415, §1(d), Oct. 25, 1994, 108 Stat. 4299, provided that:

''(1)(A) Beginning 24 months after the date of the enactment of this Act [Apr. 30, 1994], whenever a United States consular officer issues a visa for admission to the United States, that official shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been made and that there is no basis under such system for the exclusion of such alien.

''(B) If, at the time an alien applies for an immigrant or nonimmigrant visa, the alien's name is included in the Department of State's visa lookout system and the consular officer to whom the application is made fails to follow the procedures in processing the application required by the inclusion of the alien's name in such system, the consular officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

''(2) If an alien to whom a visa was issued as a result of a failure described in paragraph (1)(B) is admitted to the United States and there is thereafter probable cause to believe that the alien was a participant in a terrorist act causing serious injury, loss of life, or significant destruction of property in the United States, the Secretary of State shall convene an Accountability Review Board under the authority of title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 [22 U.S.C. 4831 et seq.].''

ACCESS TO INTERSTATE IDENTIFICATION INDEX OF NATIONAL CRIME INFORMATION CENTER; FINGERPRINT CHECKS

Pub. L. 103–236, title I, §140(d)–(g), Apr. 30, 1994, 108 Stat. 400, as amended by Pub. L. 103–317, title V, §505, Aug. 26, 1994, 108 Stat. 1765, provided that:

''(d) ACCESS TO THE INTERSTATE IDENTIFICATION INDEX.—

''(1) Subject to paragraphs (2) and (3), the Department of State Consolidated Immigrant Visa Processing Center shall have on-line access, without payment of any fee or charge, to the Interstate Identification Index of the National Crime Information Center solely for the purpose of determining whether a visa applicant has a criminal history record indexed in such Index. Such access does not entitle the Department of State to obtain the full content of automated records through the Interstate Identification Index. To obtain the full content of a criminal history record, the Department shall submit a separate request to the Identification Records Section of the Federal Bureau of Investigation, and shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (Public Law 101–162) [103 Stat. 988, 998].

''(2) The Department of State shall be responsible for all one-time start-up and recurring incremental non-personnel costs of establishing and maintaining the access authorized in paragraph (1).

''(3) The individual primarily responsible for the day-to-day implementation of paragraph (1) shall be an employee of the Federal Bureau of Investigation selected by the Department of State, and detailed to the Department on a fully reimbursable basis.

''(e) FINGERPRINT CHECKS.—

''(1) Effective not later than March 31, 1995, the Secretary of State shall in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available require the fingerprinting of applicants over sixteen years of age for immigrant visas. The Department of State shall submit records of such fingerprints to the Federal Bureau of Investigation in order to ascertain whether such applicants previously have been convicted of a felony under State or Federal law in the United States, and shall pay all appropriate fees.

''(2) The Secretary shall prescribe and publish such regulations as may be necessary to implement the requirements of this subsection, and to avoid undue processing costs and delays for eligible immigrants and the United States Government.

''(f) Not later than December 31, 1996, the Secretary of State and the Director of the Federal Bureau of Investigation shall jointly submit to the Committee on Foreign Affairs [now Committee on International Relations] and the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate, a report on the effectiveness of the procedures authorized in subsections (d) and (e).

''(g) Subsections (d) and (e) shall cease to have effect after December 31, 1997.''

VISA LOOKOUT SYSTEMS

Pub. L. 103–236, title I, §140(b), Apr. 30, 1994, 108 Stat. 399, provided that: ''Not later than 18 months after the date of the enactment of this Act [Apr. 30, 1994], the Secretary of State shall implement an upgrade of all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities.''

Pub. L. 102–138, title I, §128, Oct. 28, 1991, 105 Stat. 660, provided that:

''(a) VISAS.—The Secretary of State may not include in the Automated Visa Lookout System, or in any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the name of any alien who is not excludable from the United States under the Immigration and Nationality Act, subject to the provisions of this section.

''(b) CORRECTION OF LISTS.—Not later than 3 years after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall—

''(1) correct the Automated Visa Lookout System, or any other system or list which maintains informa-

tion about the excludability of aliens under the Immigration and Nationality Act, by deleting the name of any alien not excludable under the Immigration and Nationality Act; and

''(2) report to the Congress concerning the completion of such correction process.

''(c) REPORT ON CORRECTION PROCESS.—

''(1) Not later than 90 days after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State, in coordination with the heads of other appropriate Government agencies, shall prepare and submit to the appropriate congressional committees, a plan which sets forth the manner in which the Department of State will correct the Automated Visa Lookout System, and any other system or list as set forth in subsection (b).

''(2) Not later than 1 year after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall report to the appropriate congressional committees on the progress made toward completing the correction of lists as set forth in subsection (b).

''(d) APPLICATION.—This section refers to the Immigration and Nationality Act as in effect on and after June 1, 1991.

''(e) LIMITATION.—

''(1) The Secretary may add or retain in such system or list the names of aliens who are not excludable only if they are included for otherwise authorized law enforcement purposes or other lawful purposes of the Department of State. A name included for other lawful purposes under this paragraph shall include a notation which clearly and distinctly indicates that such person is not presently excludable. The Secretary of State shall adopt procedures to ensure that visas are not denied to such individuals for any reason not set forth in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(2) The Secretary shall publish in the Federal Register regulations and standards concerning maintenance and use by the Department of State of systems and lists for purposes described in paragraph (1).

''(3) Nothing in this section may be construed as creating new authority or expanding any existing authority for any activity not otherwise authorized by law.

''(f) DEFINITION.—As used in this section the term 'appropriate congressional committees' means the Committee on the Judiciary and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate.''

CHANGES IN LABOR CERTIFICATION PROCESS

Section 122 of Pub. L. 101–649, as amended by Pub. L. 103–416, title II, § 219(ff), Oct. 25, 1995, 108 Stat. 4319, provided that:

''[(a) Repealed. Pub. L. 103–416, title II, § 219(ff), Oct. 25, 1994, 108 Stat. 4319.]

''(b) NOTICE IN LABOR CERTIFICATIONS.—The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(5)(A)], that—

''(1) no certification may be made unless the applicant for certification has, at the time of filing the application, provided notice of the filing (A) to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations; and

''(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers).''

REVIEW OF EXCLUSION LISTS

Section 601(c) of Pub. L. 101–649 provided that: ''The Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms for the screening of aliens applying for visas for admission, or for admission, to the United States. Such protocols and guidelines shall be developed in a manner that ensures that in the case of an alien—

''(1) whose name is in such system, and

''(2) who either (A) applies for entry after the effective date of the amendments made by this section [see Effective Date of 1990 Amendment note above], or (B) requests (in writing to a local consular office after such date) a review, without seeking admission, of the alien's continued excludability under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

if the alien is no longer excludable because of an amendment made by this section the alien's name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be excludable the alien shall be informed of such determination.''

IMPLEMENTATION OF REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES DURING 5-YEAR PERIOD

Section 3(c) of Pub. L. 101–238 provided that: ''The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall—

''(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act [Dec. 18, 1989]; and

''(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—

''(A) concerning the impact of this section on the nursing shortage,

''(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,

''(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

''(D) on the advisability of extending the amendments made by this section [amending sections 1101 and 1182 of this title] beyond the 5-year period described in subsection (d) [set out above].''

PROHIBITION ON EXCLUSION OR DEPORTATION OF ALIENS ON CERTAIN GROUNDS

Section 901 of Pub. L. 100–204, as amended by Pub. L. 100–461, title V, § 555, Oct. 1, 1988, 102 Stat. 2268–36; Pub. L. 101–246, title I, § 128, Feb. 16, 1990, 104 Stat. 30, provided that no nonimmigrant alien was to be denied a visa or excluded from admission into the United States, or subject to deportation because of any past, current or expected beliefs, statements or associations which, if engaged in by a United States citizen in the United States, would be protected under the Constitution of the United States, and which provided construction regarding excludable aliens and standing to sue, prior to repeal by Pub. L. 101–649, title VI, § 603(a)(21), Nov. 29, 1990, 104 Stat. 5084.

REGULATIONS GOVERNING ADMISSION, DETENTION, AND TRAVEL OF NONIMMIGRANT ALIENS IN GUAM PURSUANT TO VISA WAIVERS

Section 14(b) of Pub. L. 99–396, as amended by Pub. L. 100–525, § 3(1)(B), Oct. 24, 1988, 102 Stat. 2614, directed Attorney General to issue, within 90 days after Aug. 27, 1986, regulations governing the admission, detention,

and travel of nonimmigrant aliens pursuant to the visa waiver authorized by the amendment made by section 14(a) of Pub. L. 99–396, prior to repeal by Pub. L. 101–649, title VI, §603(a)(19), Nov. 29, 1990, 104 Stat. 5084.

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF PROVISIONS AUTHORIZING WAIVER OF CERTAIN REQUIREMENTS FOR NONIMMIGRANT VISITORS TO GUAM

Section 14(c) of Pub. L. 99–396, as amended by Pub. L. 100–525, §3(1)(B), (C), Oct. 24, 1988, 102 Stat. 2614, directed Attorney General to submit a report each year on implementation of 8 U.S.C. 1182(*l*) to Committees on the Judiciary and Interior and Insular Affairs of House of Representatives and Committees on the Judiciary and Energy and Natural Resources of Senate, prior to repeal by Pub. L. 101–649, title VI, §603(a)(19), Nov. 29, 1990, 104 Stat. 5084.

SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS

Pub. L. 99–93, title I, §132, Aug. 16, 1985, 99 Stat. 420, provided that:

''(a) REPORTING SYSTEMS.—In order to ensure that foreign narcotics traffickers are denied visas to enter the United States, as required by section 212(a)(23) of the Immigration and Naturalization Act (22 [8] U.S.C. 1182(a)(23))—

''(1) the Department of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the United States Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States, so that that information may be communicated to the appropriate United States embassies; and

''(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines which would permit the sharing of information on foreign drug traffickers.

''(b) REPORT.—Not later than six months after the date of the enactment of this Act [Aug. 16, 1985], the Chairman of the National Drug Enforcement Policy Board shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the steps taken to implement this section.''

ADJUSTMENT OF STATUS OF NONIMMIGRANT ALIENS RESIDING IN THE VIRGIN ISLANDS TO PERMANENT RESIDENT ALIEN STATUS

Upon application during the one-year period beginning Sept. 30, 1982, by a nonimmigrant alien worker or the spouse or minor child of such worker who has resided continuously in the Virgin Islands since June 30, 1975, the Attorney General may adjust the status of such nonimmigrant alien to that of an alien lawfully admitted for permanent residence, provided among other conditions, that the alien is otherwise admissible to the United States for permanent residence, except for the grounds of exclusion specified in subsec. (a)(14), (20), (21), (25), (32) of this section, and such alien is not to be deported for failure to maintain nonimmigrant status until final action is taken on the alien's application for adjustment, see section 2(a), (b) of Pub. L. 97–271, set out as a note under section 1255 of this title.

REFUGEES FROM DEMOCRATIC KAMPUCHEA (CAMBODIA); TEMPORARY PAROLE INTO UNITED STATES FOR FISCAL YEARS 1979 AND 1980

Pub. L. 95–431, title VI, §605, Oct. 10, 1978, 92 Stat. 1045, provided that: ''It is the sense of the Congress that—

''(1) the Government of the United States should give special consideration to the plight of refugees from Democratic Kampuchea (Cambodia) in view of the magnitude and severity of the violations of human rights committed by the Government of Democratic Kampuchea (Cambodia); and

''(2) the Attorney General should exercise his authority under section 212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section] to parole into the United States—

''(A) for the fiscal year 1979, 7,500 aliens who are nationals or citizens of Democratic Kampuchea (Cambodia) and who are applying for admission to the United States; and

''(B) for the fiscal year 1980, 7,500 such aliens.''

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

Pub. L. 95–412, §5, Oct. 5, 1978, 92 Stat. 909, as amended by Pub. L. 96–212, title II, §203(g), Mar. 17, 1980, 94 Stat. 108, provided that: ''Notwithstanding any other provision of law, any refugee, not otherwise eligible for retroactive adjustment of status, who was or is paroled into the United States by the Attorney General pursuant to section 212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section] before April 1, 1980, shall have his status adjusted pursuant to the provisions of section 203(g) and (h) of that Act [section 1153(g) and (h) of this title].''

REPORT BY ATTORNEY GENERAL TO CONGRESSIONAL COMMITTEES ON ADMISSION OF CERTAIN EXCLUDABLE ALIENS

Pub. L. 95–370, title IV, §401, Sept. 17, 1978, 92 Stat. 627, directed Attorney General, by October 30, 1979, to report to specific congressional committees on certain cases of the admission to the United States of aliens that may have been excludable under section 1182(a)(27) to (29) of this title.

NATIONAL BOARD OF MEDICAL EXAMINERS EXAMINATION

Section 602(a), (b) of Pub. L. 94–484, as added Pub. L. 95–83, title III, §307(q)(3), Aug. 1, 1977, 91 Stat. 395, eff. Jan. 10, 1977, provided that an alien who is a graduate of a medical school would be considered to have passed parts I and II of the National Board of Medical Examiners Examination if the alien was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State, held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and was on that date practicing medicine in a State, prior to repeal by Pub. L. 97–116, §5(a)(3), Dec. 29, 1981, 95 Stat. 1612. See subsecs. (a)(32) and (j)(1)(B) of this section.

LABOR CERTIFICATION FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS; DEVELOPMENT OF DATA BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE NOT LATER THAN OCT. 12, 1977

Section 906 of Pub. L. 94–484 directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 12, 1976, to develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools, such data to include the number of physicians (by specialty and by percent of population) in a geographic area necessary to provide adequate medical care, including such care in hospitals, nursing homes, and other health care institutions, in such area.

RESETTLEMENT OF REFUGEE-ESCAPEE; REPORTS; FORMULA; TERMINATION DATE; PERSONS DIFFICULT TO RESETTLE; CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE

Pub. L. 86–648, §§1–4, 11, July 14, 1960, 74 Stat. 504, 505, as amended by Pub. L. 87–510, §6, June 28, 1962, 76 Stat. 124; Pub. L. 89–236, §16, Oct. 3, 1965, 79 Stat. 919, provided:

''[SECTION 1. Repealed. Pub. L. 89–236, §16, Oct. 3, 1965, 79 Stat. 919.]

''[SEC. 2. Repealed. Pub. L. 89–236, §16, Oct. 3, 1965, 79 Stat. 919.]

''SEC. 3. Any alien who was paroled into the United States as a refugee-escapee, pursuant to section 1 of the Act, whose parole has not theretofore been terminated by the Attorney General pursuant to such regulations as he may prescribe under the authority of section

212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section]; and who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States, and his case dealt with in accordance with the provisions of sections 235, 236, and 237 of the Immigration and Nationality Act [sections 1225, 1226 and 1227 of this title].

''SEC. 4. Any alien who, pursuant to section 3 of this Act, is found, upon inspection by the immigration officer or after hearing before a special inquiry officer, to be admissible as an immigrant under the Immigration and Nationality Act [this chapter] at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the said Act [subsec. (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

* * * * *

''[SEC. 11. Repealed. Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919.]''

CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN HUNGARIAN REFUGEES

Pub. L. 85–559, July 25, 1958, 72 Stat. 419, provided: ''That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212(d)(5) of the Immigration and Nationality Act [subsection (d)(5) of this section] subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act [sections 1225, 1226 and 1227 of this title].

''SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the Immigration and Nationality Act [subsection (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

''SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.''

EXECUTIVE ORDER NO. 12324

Ex. Ord. No. 12324, Sept. 29, 1981, 46 F.R. 48109, which directed Secretary of State to enter into cooperative arrangements with foreign governments for purpose of preventing illegal migration to United States by sea, directed Secretary of the Department in which the Coast Guard is operating to issue appropriate instructions to Coast Guard to enforce suspension of entry of undocumented aliens and interdiction of any defined vessel carrying such aliens, and directed Attorney General to ensure fair enforcement of immigration laws and strict observance of international obligations of United States concerning those who genuinely flee persecution in their homeland, was revoked and replaced by Ex. Ord. No. 12807, § 4, May 24, 1992, 57 F.R. 23134, set out below.

PROC. NO. 4865. HIGH SEAS INTERDICTION OF ILLEGAL ALIENS

Proc. No. 4865, Sept. 29, 1981, 46 F.R. 48107, provided:

The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and with agencies of the Executive Branch of our Government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessels trafficking in illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

RONALD REAGAN.

EX. ORD. NO. 12807. INTERDICTION OF ILLEGAL ALIENS

Ex. Ord. No. 12807, May 24, 1992, 57 F.R. 23133, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and whereas:

(1) The President has authority to suspend the entry of aliens coming by sea to the United States without necessary documentation, to establish reasonable rules and regulations regarding, and other limitations on, the entry or attempted entry of aliens into the United States, and to repatriate aliens interdicted beyond the territorial sea of the United States;

(2) The international legal obligations of the United States under the United Nations Protocol Relating to the Status of Refugees (U.S. T.I.A.S. 6577; 19 U.S.T. 6223) to apply Article 33 of the United Nations Convention Relating to the Status of Refugees do not extend to persons located outside the territory of the United States;

(3) Proclamation No. 4865 [set out above] suspends the entry of all undocumented aliens into the United States by the high seas; and

(4) There continues to be a serious problem of persons attempting to come to the United States by sea without necessary documentation and otherwise illegally;

I, GEORGE BUSH, President of the United States of America, hereby order as follows:

SECTION 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

SEC. 2. (a) The Secretary of the Department in which the Coast Guard is operating, in consultation, where appropriate, with the Secretary of Defense, the Attorney General, and the Secretary of State, shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.

(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Attorney General, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

SEC. 3. This order is intended only to improve the internal management of the Executive Branch. Neither this order nor any agency guidelines, procedures, instructions, directives, rules or regulations implementing this order shall create, or shall be construed to create, any right or benefit, substantive or procedural (including without limitation any right or benefit under the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.]), legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person. Nor shall this order be construed to require any procedures to determine whether a person is a refugee.

SEC. 4. Executive Order No. 12324 is hereby revoked and replaced by this order.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

CROSS REFERENCES

Alien enemies, see section 21 et seq. of Title 50, War and National Defense.

Alien women, prevention of transportation in foreign commerce under international agreement, see section 1557 of this title.

Atomic weapons information, waiver of admission requirements, see section 47c of Title 50, War and National Defense.

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 of this title.

Bond or undertaking as prerequisite to admission of aliens likely to become public charge or with certain physical disabilities, see section 1183 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 of this title.

Forms to be prescribed by Attorney General, see section 1103 of this title.

Definition of the term—

Adjacent islands, as used in this subchapter, see section 1101(b)(5) of this title.

Advocating a doctrine, see section 1101(e)(1) of this title.

Affiliation, see section 1101(e)(2) of this title.

Alien, see section 1101(a)(3) of this title.

Application for admission, see section 1101(a)(4) of this title.

Attorney General, see section 1101(a)(5) of this title.

Border crossing identification card, see section 1101(a)(6) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101(a)(9) of this title.

Doctrine, see section 1101(a)(12) of this title.

Entry, see section 1101(a)(13) of this title.

Foreign state, see section 1101(a)(14) of this title.

Immigrant, see section 1101(a)(15) of this title.

Immigrant visa, see section 1101(a)(16) of this title.

Immigration officer, see section 1101(a)(18) of this title.

Ineligible to citizenship, see section 1101(a)(19) of this title.

Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.

National, see section 1101(a)(21) of this title.

Nonimmigrant alien, see section 1101(a)(15) of this title.

Nonimmigrant visa, see section 1101(a)(26) of this title.

Organization, see section 1101(a)(28) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Passport, see section 1101(a)(30) of this title.

Permanent, see section 1101(a)(31) of this title.

Person of good moral character, see section 1101(f) of this title.

Profession, see section 1101(a)(32) of this title.

Residence, see section 1101(a)(33) of this title.

Special immigrant, see section 1101(a)(27) of this title.

Spouse, see section 1101(a)(35) of this title.

Totalitarian party and totalitarian dictatorship, see section 1101(a)(37) of this title.

United States, see section 1101(a)(38) of this title.

World communism, see section 1101(a)(40) of this title.

Deportation for offenses committed after entry into United States, see section 1251 of this title.

Detention of aliens for observation and examination, see section 1222 of this title.

Diplomatic and semidiplomatic immunities, see section 1102 of this title.

Espionage and censorship, see section 792 et seq. of Title 18, Crimes and Criminal Procedure.

Passports and visas, see section 1541 et seq. of Title 18, Crimes and Criminal Procedure.

Principals, see section 2 of Title 18.

Readmission without documentation after temporary departure, see section 1181 of this title.

Reentry permit, see section 1203 of this title.

Sabotage, see section 2151 et seq. of Title 18, Crimes and Criminal Procedure.

Stowaways on vessels or aircraft, see section 2199 of Title 18.

Submission of alien seeking immigrant or nonimmigrant visa to physical and mental examination, see section 1201 of this title.

Treason, sedition and subversive activities, see section 2381 et seq. of Title 18, Crimes and Criminal Procedure.

White slave traffic, see section 2421 et seq. of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1102, 1153, 1157, 1159, 1160, 1181, 1183, 1184, 1186, 1186a, 1187, 1201, 1222, 1224, 1225, 1226, 1251, 1254, 1254a, 1255, 1255a, 1258, 1259, 1282, 1284, 1322, 1327, 1356 of this title; title 7 section 2015; title 26 section 3304; title 28 section 1821; title 42 sections 602, 615, 1382c, 1382j, 1436a.

§§ 1182a to 1182c. Repealed. Pub. L. 87–301, § 24(a)(1), (3), Sept. 26, 1961, 75 Stat. 657

Section 1182a, act Sept. 3, 1954, ch. 1254, § 4, 68 Stat. 1145, related to admission of aliens who were either convicted, or who admitted the commission, of a misdemeanor. See section 1182(a)(9) of this title.

Section 1182b, Pub. L. 85–316, § 5, Sept. 11, 1957, 71 Stat. 640, permitted admission of an alien spouse, child or parent excludable for crime involving moral turpitude in cases of hardship, when not contrary to national welfare or security, and with Attorney General's consent, and under conditions and procedures prescribed by him. See section 1182(h) of this title.

Section 1182c, Pub. L. 85–316, § 6, Sept. 11, 1957, 71 Stat. 640; Pub. L. 86–253, § 1, Sept. 9, 1959, 73 Stat. 490, authorized admission of an alien spouse, child, or parent of a United States citizen afflicted with tuberculosis under terms, conditions and controls prescribed by Attorney General. See section 1182(g) of this title.

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

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

(June 27, 1952, ch. 477, title II, ch. 2, § 213, 66 Stat. 188; July 10, 1970, Pub. L. 91–313, § 1, 84 Stat. 413; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(8), 104 Stat. 5083.)

AMENDMENTS

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

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

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.

CROSS REFERENCES

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or those likely to become public charges, see section 1201 of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 of this title.

Forms to be prescribed by Attorney General, see section 1103 of this title.

Definition of alien and Attorney General, see section 1101 of this title.

Nationality and naturalization, see section 1401 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1201 of this title.

§ 1184. Admission of nonimmigrants

(a) Regulations

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

(2)(A) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(O) of this title shall be for such period as the Attor-

ney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

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

(b) Presumption of status; written waiver

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

(c) Petition of importing employer; involvement of Departments of Labor and Agriculture

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

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 1101(a)(15)(L) of this title instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for entry of aliens covered under such a petition.

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

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

(D) The period of authorized admission for—

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

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

(3) The Attorney General shall approve a petition—

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

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

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

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

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

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

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

(I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide

a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

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

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

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

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

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

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

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

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

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

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

(d) Issuance of visa to fiancee or fiance of citizen

A visa shall not be issued under the provisions of section 1101(a)(15)(K) of this title until the consular officer has received a petition filed in the United States by the fiancee and fiance of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 1252 and 1253 of this title.

(e) Nonimmigrant professionals and annual numerical limit

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

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

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

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

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

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

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

(B) the President has submitted a report to the Committee on the Judiciary of the Senate

and the Committee on the Judiciary of the House of Representatives that sets forth—

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

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

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

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

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

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

(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 1101(a)(15)(D) of this title if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 2101(46) of title 46) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

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

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

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

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

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

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

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

(g) Temporary workers and trainees; limitation on numbers

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

(A) under section 1101(a)(15)(H)(i)(b) of this title may not exceed 65,000, or

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

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

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

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

(h) Intention to abandon foreign residence

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

(i) "Specialty occupation" defined

(1) For purposes of section 1101(a)(15)(H)(i)(b) of this title and paragraph (2), the term ''specialty occupation'' means an occupation that requires—

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

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

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

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

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

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

(j)[1] Labor disputes

Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States

[1] So in original. Two subsecs. (j) have been enacted.

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

(j)[1] Numerical limitations; period of admission; conditions for admission and stay; annual report

(1) The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(i) of this title in any fiscal year may not exceed 100. The number of aliens who may be provided a visa as nonimmigrants under section 1101(a)(15)(S)(ii) of this title in any fiscal year may not exceed 25.

(2) No alien may be admitted into the United States as such a nonimmigrant more than 5 years after September 13, 1994.

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

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

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

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

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

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

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

(A) the number of such nonimmigrants admitted;

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

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

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

(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (4)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

(k) Restrictions on waiver

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

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

(B) the alien demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin employment at such facility within 90 days of receiving such waiver and agrees to continue to work in accordance with paragraph (2) at the health care facility in which the alien is employed for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances such as the closure of the facility or hardship to the alien would justify a lesser period of time);

(C) the alien agrees to practice medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

(D) the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed twenty.

(2)(A) Notwithstanding section 1258(2) of this title, the Attorney General may change the status of an alien that qualifies under this subsection and section 1182(e) of this title to that of an alien described in section 1101(a)(15)(H)(i)(b) of this title.

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

(3) Notwithstanding any other provision of this subsection, the two-year foreign residence requirement under section 1182(e) of this title shall apply with respect to an alien described in clause (iii) of that section, who has not otherwise been accorded status under section 1101(a)(27)(H) of this title, if at any time the alien practices medicine in an area other than an area described in paragraph (1)(C).

(June 27, 1952, ch. 477, title II, ch. 2, § 214, 66 Stat. 189; Apr. 7, 1970, Pub. L. 91–225, § 3, 84 Stat. 117; Oct. 5, 1984, Pub. L. 98–454, title VI, § 602(b), 98 Stat. 1737; Nov. 6, 1986, Pub. L. 99–603, title III, §§ 301(b), 313(b), 100 Stat. 3411, 3438; Nov. 10, 1986, Pub. L. 99–639, § 3(a), (c), 100 Stat. 3542; Sept. 28, 1988, Pub. L. 100–449, title III, § 307(b), 102 Stat. 1877; Oct. 24, 1988, Pub. L. 100–525, § 2(*l*)(1), 102 Stat. 2612; Nov. 29, 1990, Pub. L. 101–649, title II, §§ 202(a), 205(a), (b), (c)(2), 206(b), 207(b), 104 Stat. 5014, 5019, 5020, 5023, 5025; Dec. 12, 1991, Pub. L. 102–232, title II, §§ 202(a), 203(b), 204, 205(d), (e), 206(a), (c)(2), 207(a), (c)(1), title III, § 303(a)(10)–(12), 105 Stat. 1737–1741, 1748; Dec. 8, 1993, Pub. L. 103–182, title III, § 341(b), (c), 107 Stat. 2116, 2117; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(b)(2), 108 Stat. 2025; Oct. 25, 1994, Pub. L. 103–416, title II, § 220(b), 108 Stat. 4319.)

References in Text

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

Codification

In subsec. (f)(1), ''section 40102(a)(2) of title 49'' substituted for ''section 101(3) of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Amendments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cretion may waive the requirement that the parties have previously met in person''.

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 applicable to aliens admitted to United States under section 1101(a)(15)(J) of this title, or acquiring such status after admission to United States, before, on, or after Oct. 25, 1994, and before June 1, 1996, see section 220(c) of Pub. L. 103–416, set out as an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

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

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

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

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

EFFECTIVE DATE OF 1986 AMENDMENTS

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

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

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

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

DEADLINE FOR FIRST REPORT WITH RESPECT TO PETITIONS

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

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

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

WORK AUTHORIZATION DURING PENDING LABOR DISPUTES

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

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

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

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

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

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

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

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

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

OFF-CAMPUS WORK AUTHORIZATION FOR STUDENTS (F NONIMMIGRANTS)

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

''(a) 5-YEAR PROVISION.—With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15) of

the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)] during the 5-year period beginning October 1, 1991, the Attorney General shall grant such an alien work authorization to be employed off-campus if—

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

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

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

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

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

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

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

LIMITATION ON ADMISSION OF ALIENS SEEKING EMPLOYMENT IN THE VIRGIN ISLANDS

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

IMPORTATION OF SHEEPHERDERS; TERMINATION OF QUOTA DEDUCTIONS

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

CANCELLATION OF CERTAIN NONIMMIGRANT DEPARTURE BONDS

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

CROSS REFERENCES

Bonds—

Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain disabilities, see section 1183 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 of this title.

Forms to be prescribed by Attorney General, see section 1103 of this title.

Definition of alien, Attorney General, consular officer, immigrant, immigrant visa, immigration officer, nonimmigrant alien, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1182, 1186, 1186a, 1201, 1255 of this title, title 26 section 3306; title 29 section 1802.

§ 1184a. Philippine Traders as nonimmigrants

Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible into the United States under this chapter, be considered to be classifiable as a nonimmigrant under section 1101(a)(15)(E) of this title if entering solely for the purposes specified in clause (i) or (ii) of said section 1101(a)(15)(E).

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

CODIFICATION

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

§ 1185. Travel control of citizens and aliens

(a) Restrictions and prohibitions

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

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

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

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

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

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

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

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

(b) Citizens

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

(c) Definitions

The term ''United States'' as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term ''person'' as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(d) Nonadmission of certain aliens

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

(e) Revocation of proclamation as affecting penalties

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

(f) Permits to enter

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

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

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

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

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

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

JIMMY CARTER.

CROSS REFERENCES

Counterfeiting and forgery, see section 471 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of alien, entry, passport, person, State, and United States, see section 1101 of this title.

False personation, see section 911 et seq. of Title 18, Crimes and Criminal Procedure.

Fines, penalties and forfeitures, see section 2461 et seq. of Title 28, Judiciary and Judicial Procedure.

Fraud and false statements, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

Passports and visas, see section 1541 et seq. of Title 18.

Repeal of statutes as affecting existing liabilities, see section 109 of Title 1, General Provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

§ 1186. Transferred

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

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

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in sub-

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

(2) Notice of requirements

(A) At time of obtaining permanent residence

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

(B) At time of required petition

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

(C) Effect of failure to provide notice

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

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

(1) In general

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

(A) the qualifying marriage—

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

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

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

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

(2) Hearing in deportation proceeding

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

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

(1) In general

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

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

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

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

(A) In general

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

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

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

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

(B) Hearing in deportation proceeding

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

(3) Determination after petition and interview

(A) In general

If—

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

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

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

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

(B) Removal of conditional basis if favorable determination

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

(C) Termination if adverse determination

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

(D) Hearing in deportation proceeding

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

(4) Hardship waiver

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

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

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

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

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

(d) Details of petition and interview

(1) Contents of petition

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

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

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

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

(III) was not entered into for the purpose of procuring an alien's entry as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) or 1184(d) of this title with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a) of this section, and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during deportation

In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the

Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of exclusion, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions

In this section:

(1) The term ''alien spouse'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term ''alien son or daughter'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term ''qualifying marriage'' means the marriage described to in paragraph (1).

(4) The term ''petitioning spouse'' means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 10, 1986, Pub. L. 99–639, § 2(a), 100 Stat. 3537; amended Oct. 24, 1988, Pub. L. 100–525, § 7(a), 102 Stat. 2616; Nov. 29, 1990, Pub. L. 101–649, title VII, § 701(a), 104 Stat. 5085; Dec. 12, 1991, Pub. L. 102–232, title III, § 302(e)(8)(B), 105 Stat. 1746; Sept. 13, 1994, Pub. L. 103–322, title IV, § 40702(a), 108 Stat. 1955.)

CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS

1994—Subsec. (c)(4). Pub. L. 103–322 inserted after second sentence ''In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.''

1991—Subsec. (g)(1). Pub. L. 102–232 substituted ''section 1153(d)'' for ''section 1153(a)(8)'' in closing provisions.

1990—Subsec. (c)(4). Pub. L. 101–649 struck out ''or'' at end of subpar. (A), struck out ''by the alien spouse for good cause'' after ''death of the spouse)'' and substituted '', or'' for period at end of subpar. (B), added subpar. (C), and inserted at end ''The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.''

1988—Pub. L. 100–525, § 7(a)(1), made technical amendment to directory language of Pub. L. 99–639, § 2(a), which enacted this section.

Subsec. (c)(3)(A). Pub. L. 100–525, § 7(a)(2), substituted ''90 days'' for ''90-days''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 40702(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994] and shall apply to applications made before, on, or after such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1186b, 1251, 1255 of this title.

§ 1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

(a) In general

(1) Conditional basis for status

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

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien entrepreneur, alien spouse, or alien child obtains permanent

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

(B) At time of required petition

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

(C) Effect of failure to provide notice

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

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

(1) In general

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

(A) the establishment of the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

(B)(i) a commercial enterprise was not established by the alien,

(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien's residence in the United States, or

(C) the alien was otherwise not conforming to the requirements of section 1153(b)(5) of this title,

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

(2) Hearing in deportation proceeding

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

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

(1) In general

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

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

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

(A) In general

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

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

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section),

the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 1186a of this title) as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in deportation proceeding

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

(3) Determination after petition and interview

(A) In general

If—

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

(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B),

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

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional

basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

(C) Termination if adverse determination

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

(D) Hearing in deportation proceeding

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

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that—

(A) a commercial enterprise was established by the alien;

(B) the alien invested or was actively in the process of investing the requisite capital; and

(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien's residence in the United States.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during deportation

In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Definitions

In this section:

(1) The term ''alien entrepreneur'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 1153(b)(5) of this title.

(2) The term ''alien spouse'' and the term ''alien child'' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(June 27, 1952, ch. 477, title II, ch. 2, § 216A, as added Nov. 29, 1990, Pub. L. 101–649, title I, § 121(b)(1), 104 Stat. 4990; amended Dec. 12, 1991, Pub. L. 102–232, title III, § 302(b)(3), 105 Stat. 1743.)

AMENDMENTS

1991—Subsec. (c)(2)(A). Pub. L. 102–232, § 302(b)(3)(A), in closing provisions inserted parenthetical provision relating to alien's spouse and children.

Subsecs. (c)(3)(B), (d)(2)(A). Pub. L. 102–232, § 302(b)(3)(B), struck out ''obtaining the status of'' before ''lawful admission''.

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE

Section effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1255 of this title.

§ 1187. Visa waiver pilot program for certain visitors

(a) Establishment of pilot program

The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this section referred to as the ''pilot program'') under which the requirement of paragraph (7)(B)(i)(II) of section 1182(a)

of this title may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the pilot program period (as defined in subsection (e) of this section) as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of pilot program country

The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c) of this section or is designated as a pilot program country with probationary status under subsection (g) of this section.

(3) Executes immigration forms

The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(4) Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer.

(5) Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(6) No previous violation

If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(7) Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations).

(b) Waiver of rights

An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

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

(2) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(c) Designation of pilot program countries

(1) In general

The Attorney General and the Secretary of State acting jointly may designate any country as a pilot program country if it meets the requirements of paragraph (2).

(2) Qualifications

Except as provided in subsection (g)(4) of this section, a country may not be designated as a pilot program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate for previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(B) Low nonimmigrant visa refusal rate for each of 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(C) Machine readable passport program

The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

(D) Law enforcement interests

The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.

(3) Continuing and subsequent qualifications

For each fiscal year (within the pilot program period) after the initial period—

(A) Continuing qualification

In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) New countries

In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

(i) Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full

fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period

For purposes of paragraphs (2) and (3), the term ''initial period'' means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

(d) Authority

Notwithstanding any other provision of this section, the Attorney General and the Secretary of State, acting jointly, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section.

(e) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section,

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program, and

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General.

(2) Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

(f) "Pilot program period" defined

For purposes of this section, the term ''pilot program period'' means the period beginning on October 1, 1988, and ending on September 30, 1996[1]

(g) Pilot program country with probationary status

(1) In general

The Attorney General and the Secretary of State acting jointly may designate any country as a pilot program country with probationary status if it meets the requirements of paragraph (2).

(2) Qualifications

A country may not be designated as a pilot program country with probationary status unless the following requirements are met:

(A) Nonimmigrant visa refusal rate for previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of the country during the two previous full fiscal years was less than 3.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(B) Nonimmigrant visa refusal rate for previous year

The number of refusals of nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was less than 3 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(C) Low exclusions and violations rate for previous year

The sum of—

(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 1.5 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

(D) Machine readable passport program

The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

(3) Continuing and subsequent qualifications for pilot program countries with probationary status

The designation of a country as a pilot program country with probationary status shall terminate if either of the following occurs:

(A) The sum of—

(i) the total number of nationals of that country who were excluded from admission

[1] So in original. Probably should be followed by a period.

or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as visitors during the preceding fiscal year and who violated the terms of such admission,

is more than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

(B) The country is not designated as a pilot program country under subsection (c) of this section within 3 fiscal years of its designation as a pilot program country with probationary status under this subsection.

(4) Designation of pilot program countries with probationary status as pilot program countries

In the case of a country which was a pilot program country with probationary status in the preceding fiscal year, a country may be designated by the Attorney General and the Secretary of State, acting jointly, as a pilot program country under subsection (c) of this section if—

(A) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

(B) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such preceding fiscal year.

(June 27, 1952, ch. 477, title II, ch. 2, § 217, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 313(a), 100 Stat. 3435; amended Oct. 24, 1988, Pub. L. 100–525, § 2(p)(1), (2), 102 Stat. 2613; Nov. 29, 1990, Pub. L. 101–649, title II, § 201(a), 104 Stat. 5012; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 303(a)(1), (2), 307(*l*)(3), 105 Stat. 1746, 1756; Oct. 25, 1994, Pub. L. 103–415, § 1(m), 108 Stat. 4301; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 210, 211, 108 Stat. 4312, 4313.)

AMENDMENTS

1994—Subsec. (a)(2)(B). Pub. L. 103–416, § 211(1), inserted before period at end ''or is designated as a pilot program country with probationary status under subsection (g) of this section''.

Subsec. (c)(2). Pub. L. 103–416, § 211(3), substituted ''Except as provided in subsection (g)(4) of this section, a country'' for ''A country''.

Subsec. (f). Pub. L. 103–416, § 210, substituted ''1996'' for ''1995.''.

Pub. L. 103–415 substituted ''1995'' for ''1994''.

Subsec. (g). Pub. L. 103–416, § 211(2), added subsec. (g).

1991—Subsec. (a). Pub. L. 102–232, § 307(*l*)(3), substituted ''paragraph (7)(B)(i)(II)'' for ''paragraph (26)(B)''.

Subsec. (a)(4). Pub. L. 102–232, § 303(a)(1)(A), in heading substituted ''into the United States'' for ''by sea or air''.

Subsec. (b). Pub. L. 102–232, § 303(a)(1)(B), made technical amendment to heading.

Subsec. (e)(1). Pub. L. 102–232, § 303(a)(2), substituted ''subsection (a)(4)'' for ''subsection (a)(4)(C)''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 201(a)(1), inserted '', and presents a passport issued by,'' after ''is a national of''.

Subsec. (a)(3). Pub. L. 101–649, § 201(a)(2), in heading substituted reference to immigration forms for reference to entry control and waiver forms, and in text substituted ''completes such immigration form as the Attorney General shall establish'' for ''—

''(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3) of this section, and

''(B) executes a waiver of review and appeal described in subsection (b)(4) of this section''.

Subsec. (a)(4). Pub. L. 101–649, § 201(a)(3), added par. (4) and struck out former par. (4) which waived visa requirement for certain aliens having round-trip transportation tickets.

Subsec. (a)(7). Pub. L. 101–649, § 201(a)(4), added par. (7).

Subsec. (b). Pub. L. 101–649, § 201(a)(5), redesignated subsec. (b)(4) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out subsec. (b) heading ''Conditions before pilot program can be put into operation'' and pars. (1) to (3) which related to prior notice to Congress, automated data arrival and departure system, and visa waiver information form, respectively.

Subsec. (c)(1). Pub. L. 101–649, § 201(a)(6)(A), substituted in heading, ''In general'' for ''Up to 8 countries'' and in text substituted ''any country as a pilot program country if it meets the requirements of paragraph (2)'' for ''up to eight countries as pilot program countries for purposes of the pilot program''.

Subsec. (c)(2). Pub. L. 101–649, § 201(a)(6)(B), substituted ''Qualifications'' for ''Initial qualifications'' in heading and ''A country'' for ''For the initial period described in paragraph (4), a country'' in introductory provisions, and added subpars. (C) and (D).

Subsec. (d). Pub. L. 101–649, § 201(a)(7), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–649, § 201(a)(7), (8), redesignated subsec. (d) as (e) and added subpar. (C) at end of par. (1). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–649, § 201(a)(7), (9), redesignated subsec. (e) as (f) and substituted ''on October 1, 1988, and ending on September 30, 1994'' for ''at the end of the 30-day period referred to in subsection (b)(1) of this section and ending on the last day of the third fiscal year which begins after such 30-day period''.

1988—Pub. L. 100–525, § 2(p)(1), made technical amendment to directory language of Pub. L. 99–603, § 313(a), which enacted this section.

Subsec. (a). Pub. L. 100–525, § 2(p)(2), substituted ''hereinafter'' for ''hereafter''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 303(a)(1), (2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 201(d) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1323 of this title] shall take effect as of the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

OPERATION OF AUTOMATED DATA ARRIVAL AND DEPARTURE CONTROL SYSTEM; REPORT TO CONGRESS

Section 201(c) of Pub. L. 101–649 provided that: ''By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program.''

REPORT ON VISA WAIVER PILOT PROGRAM

Section 405 of Pub. L. 99–603 provided that:

''(a) MONITORING AND REPORT ON THE PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act [8 U.S.C. 1187] and shall report to the Congress not later than two years after the beginning of the program.

''(b) DETAILS IN REPORT.—The report shall include—

''(1) an evaluation of the program, including its impact—

''(A) on the control of alien visitors to the United States,

''(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

''(C) on the United States tourism industry; and

''(2) recommendations—

''(A) on extending the pilot program period, and

''(B) on increasing the number of countries that may be designated under the program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1184, 1255, 1258 of this title.

§ 1188. Admission of temporary H–2A workers

(a) Conditions for approval of H–2A petitions

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2) of this section) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

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

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) of this section with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H–2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H–2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A) of this section) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) of this section if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H–2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H–2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H–2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H–2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) of this section or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H–2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term ''eligible individual'' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term ''H–2A worker'' means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 218, formerly § 216, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 301(c), 100 Stat. 3411; renumbered § 218 and amended Oct. 24, 1988, Pub. L. 100–525, § 2(*l*)(2), (3), 102 Stat. 2612; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 307(*l*)(4), 309(b)(8), 105 Stat. 1756, 1759; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(z)(8), 108 Stat. 4318.)

REFERENCES IN TEXT

Section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(3)(B)(iii), is section 403(a)(4)(D) of Pub. L. 99–603, which is set out in a note under this section.

CODIFICATION

Section was classified to section 1186 of this title prior to its renumbering by Pub. L. 100–525.

AMENDMENTS

1994—Subsec. (i)(1). Pub. L. 103–416 made technical correction to directory language of Pub. L. 102–232, § 309(b)(8). See 1991 Amendment note below.

1991—Subsec. (g)(3). Pub. L. 102–232, § 307(*l*)(4), substituted ''section 1182(a)(5)(A)(i)'' for ''section 1182(a)(14)''.

Subsec. (i)(1). Pub. L. 102–232, § 309(b)(8), as amended by Pub. L. 103–416, substituted ''1324a(h)(3)'' for ''1324a(h)''.

1988—Pub. L. 100–525, § 2(*l*)(2)(A), made technical amendment to directory language of Pub. L. 99–603, § 301(c), which enacted this section.

Subsec. (c)(4). Pub. L. 100–525, § 2(*l*)(3), substituted ''accommodations'' for ''accomodations'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(8) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE; REGULATIONS

Section 301(d), (e) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that:

''(d) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending sections 1101 and 1184] apply to petitions and applications filed under sections 214(c) and 218 of the Immigration and Nationality Act [8 U.S.C. 1184(c), 1188] on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986] (hereinafter in this section referred to as the 'effective date').

''(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.''

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 301(f) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(*l*)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: ''It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188].''

REPORTS ON H–2A PROGRAM

Section 403 of Pub. L. 99–603 provided that:

''(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H–2A) program, which shall include—

''(1) the number of foreign workers permitted to be employed under the program in each year;

''(2) the compliance of employers and foreign workers with the terms and conditions of the program;

''(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

''(4) recommendations for modifications of the program, including—

''(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

''(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

''(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

''(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H–2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H–2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

''(b) DEADLINES.—A report on the H–2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.''

[Functions of President under section 403 of Pub. L. 99–603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1184 of this title.

PART III—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue (1) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and (2) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101(a)(15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.

(b) Registration; photographs; waiver of requirement

Each alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of State in the case of any alien who is within that class of nonimmigrants enumerated in sections 1101(a)(15)(A), and 1101(a)(15)(G) of this title, or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.

(c) Period of validity; requirement of visa

An immigrant visa shall be valid for such period, not exceeding four months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: *Provided*, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

(d) Physical examination

Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

(e) Surrender of visa

Each immigrant shall surrender his immigrant visa to the immigration officer at the port of entry, who shall endorse on the visa the date and the port of arrival, the identity of the vessel or other means of transportation by which the immigrant arrived, and such other endorsements as may be by regulations required.

(f) Surrender of documents

Each nonimmigrant shall present or surrender to the immigration officer at the port of entry such documents as may be by regulation required. In the case of an alien crewman not in possession of any individual documents other than a passport and until such time as it becomes practicable to issue individual documents, such alien crewman may be admitted, subject to the provisions of this part, if his name appears in the crew list of the vessel or aircraft on which he arrives and the crew list is visaed by a consular officer, but the consular officer shall have the right to exclude any alien crewman from the crew list visa.

(g) Nonissuance of visas or other documents

No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law: *Provided*, That a visa or other documentation may be issued to an alien who is within the purview of section 1182(a)(4) of this title, if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 1183 of this title: *Provided further*, That a visa may be issued to an alien defined in section 1101(a)(15)(B) or (F) of this title, if such alien is otherwise entitled to receive a visa, upon receipt of a notice by the consular officer from the At-

torney General of the giving of a bond with sufficient surety in such sum and containing such conditions as the consular officer shall prescribe, to insure that at the expiration of the time for which such alien has been admitted by the Attorney General, as provided in section 1184(a) of this title, or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(h) Nonadmission upon arrival

Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to enter the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

(i) Revocation of visas or documents

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: *Provided*, That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1323(b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien's embarkation.

(June 27, 1952, ch. 477, title II, ch. 3, § 221, 66 Stat. 191; Sept. 26, 1961, Pub. L. 87–301, § 4, 75 Stat. 651; Oct. 3, 1965, Pub. L. 89–236, §§ 11(a), (b), 17, 79 Stat. 918, 919; Dec. 29, 1981, Pub. L. 97–116, § 18(f), 95 Stat. 1620; Nov. 14, 1986, Pub. L. 99–653, § 5(a), formerly § 5(a)(a)–(c), 100 Stat. 3656, renumbered § 5(a), Oct. 24, 1988, Pub. L. 100–525, § 8(d)(1), 102 Stat. 2617; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(9), 104 Stat. 5083; Dec. 12, 1991, Pub. L. 102–232, title III, § 302(e)(8)(C), 105 Stat. 1746.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232 struck out ''nonpreference,'' before ''immediate relative''.

1990—Subsec. (g). Pub. L. 101–649 substituted ''1182(a)(4) of this title'' for ''1182(a)(7), or section 1182(a)(15) of this title''.

1988—Subsecs. (a) to (c). Pub. L. 100–525 made technical correction to Pub. L. 99–653, § 5. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–653, § 5(a)(1), formerly § 5(a)(a), as redesignated by Pub. L. 100–525, in cl. (1) substituted ''specify the foreign state'' for ''specify the quota'', ''under such foreign state'' for ''under such quota'', ''special immigrant classification'' for ''special immigration classification'', and struck out ''one copy of'' after ''shall consist of''.

Subsec. (b). Pub. L. 99–653, § 5(a)(2), formerly § 5(a)(b), as redesignated by Pub. L. 100–525, amended subsec. (b) generally, striking out ''and fingerprinted'' after ''shall be registered'' and substituting ''sections 1101(a)(15)(A) and 1101(a)(15)(G) of this title'' for ''section 1101(a)(15)(A) and (G) of this title''.

Subsec. (c). Pub. L. 99–653, § 5(a)(3), formerly § 5(a)(c), as redesignated by Pub. L. 100–525, amended subsec. (c) generally, substituting ''during the fiscal year'' for ''during the year'', ''*Provided*, That the immigrant'' for ''*Provided*, the consular officer is in possession of the duplicate signed copy of the original visa, the immigrant'', and ''statutory fees'' for ''statutory fee''.

1981—Subsec. (a). Pub. L. 97–116 substituted a comma for the period after ''alien is charged''.

1965—Subsec. (a). Pub. L. 89–236, § 11(a), substituted a reference to preference, nonpreference, immediate relative, and special immigration classification, for a reference to nonquota categories to which immigrants are classified.

Subsec. (c). Pub. L. 89–236, § 11(b), struck out references to ''quota'' wherever appearing.

Subsec. (g). Pub. L. 89–236, § 17, inserted proviso permitting issuance of student or visitors visas in cases where the alien gives a bond so as to allow resolution of doubts in borderline cases in which the consular officer is uncertain as to the bona fides of the nonimmigrant's intention to remain in the United States temporarily.

1961—Subsec. (c). Pub. L. 87–301 provided that an immigrant visa issued to a child adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces or employed abroad by our Government, or temporarily abroad on business, shall remain valid to such time, but not exceeding three years, as the adoptive parent returns to the United States in due course of service, employment or business.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 23(b) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: ''The amendments made by sections 5, 6, 8, 9, and 10 [amending this section and sections 1202, 1301, 1302, and 1304 of this title and repealing section 1201a of this title] apply to applications for immigrant visas made, and visas issued, on or after November 14, 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

PERMITTING EXTENSION OF PERIOD OF VALIDITY OF IMMIGRANT VISAS FOR CERTAIN RESIDENTS OF HONG KONG

Section 154 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(d)(4), Dec. 12, 1991, 105 Stat. 1745, provided that:

''(a) EXTENDING PERIOD OF VALIDITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the limitation on the period of validity of an immigrant visa under section 221(c) of the Immigration and Nationality Act [8 U.S.C. 1201(c)] shall not apply in the case of an immigrant visa issued, on or after the date of the enactment of this Act [Nov. 29, 1990] and before September 1, 2001, to an alien described in subsection (b), but only if—

''(A) the alien elects, within the period of validity of the immigrant visa under such section, to have this section apply, and

''(B) before the date the alien seeks to be admitted to the United States for lawful permanent residence, the alien notifies the appropriate consular officer of the alien's intention to seek such admission and provides such officer with such information as the officer determines to be necessary to verify that the alien remains eligible for admission to the United States as an immigrant.

''(2) LIMITATION ON EXTENSION.—In no case shall the period of validity of a visa be extended under paragraph (1) beyond January 1, 2002.

''(3) TREATMENT UNDER NUMERICAL LIMITATIONS.—In applying the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] in the case of aliens for whose visas the period of validity is extended under this section, such limitations shall only apply at the time of original issuance of the visas and not at the time of admission of such aliens.

''(b) ALIENS COVERED.—An alien is described in this subsection if the alien—

''(1)(A) is chargeable under section 202 of the Immigration and Nationality Act [8 U.S.C. 1152] to Hong Kong or China, and

''(B)(i) is residing in Hong Kong as of the date of the enactment of this Act [Nov. 29, 1990] and is issued an immigrant visa under paragraph (1), (2), (4), or (5) of section 203(a) of the Immigration and Nationality Act [8 U.S.C. 1153(a)] (as in effect on the date of the enactment of this Act) or under section 203(a) or 203(b)(1) of such Act (as in effect on and after October 1, 1991), or (ii) is the spouse or child (as defined in subsection (d)) of an alien described in clause (i), if accompanying or following to join the alien in coming to the United States; or

''(2) is issued a visa under section 124 of this Act [enacting provisions set out as a note under section 1153 of this title].

''(c) TREATMENT OF CERTAIN EMPLOYEES IN HONG KONG.—

''(1) IN GENERAL.—In applying the proviso of section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403h], in the case of an alien described in paragraph (2), the Director may charge the entry of the alien against the numerical limitation for any fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1996) notwithstanding that the alien's entry is not made to the United States in that fiscal year so long as such entry is made before the end of fiscal year 1997.

''(2) ALIENS COVERED.—An alien is described in this paragraph if the alien—

''(A) is an employee of the Foreign Broadcast Information Service in Hong Kong, or

''(B) is the spouse or child (as defined in subsection (d)) of an alien described in subparagraph (A), if accompanying or following to join the alien in coming to the United States.

''[(3) Repealed. Pub. L. 102–232, title III, § 302(d)(4)(C), Dec. 12, 1991, 105 Stat. 1745.]

''(d) TREATMENT OF CHILDREN.—In this section, the term 'child' has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)] and also includes (for purposes of this section and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] as it applies to this section) an alien who was the child (as so defined) of the alien as of the date of the issuance of an immigrant visa to the alien described in subsection (b)(1) or, in the case described in subsection (c), as of the date of charging of the entry of the alien under the proviso under section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403h].''

[Section 154 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

CUBAN POLITICAL PRISONERS AND IMMIGRANTS

Pub. L. 100–204, title IX, § 903, Dec. 22, 1987, 101 Stat. 1401, provided that:

''(a) PROCESSING OF CERTAIN CUBAN POLITICAL PRISONERS AS REFUGEES.—In light of the announcement of the Government of Cuba on November 20, 1987, that it would reimplement immediately the agreement of December 14, 1984, establishing normal migration procedures between the United States and Cuba, on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State and appropriate officers of the Immigration and Naturalization Service shall, in accordance with the procedures applicable to such cases in other countries, process any application for admission to the United States as a refugee from any Cuban national who was imprisoned for political reasons by the Government of Cuba on or after January 1, 1959, without regard to the duration of such imprisonment, except as may be necessary to reassure the orderly process of available applicants.

''(b) PROCESSING OF IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN THIRD COUNTRIES.—Notwithstanding section 212(f) and section 243(g) of the Immigration and Nationality Act [8 U.S.C. 1182(f), 1253(g)], on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State shall process immigrant visa applications by nationals of Cuba located in third countries on the same basis as immigrant visa applications by nationals of other countries.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'process' means the acceptance and review of applications and the preparation of necessary documents and the making of appropriate determinations with respect to such applications.

''(2) The term 'refugee' has the meaning given such term in section 101(a)(42) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(42)].''

Pub. L. 100–202, § 101(a) [title VII], Dec. 22, 1987, 101 Stat. 1329, 1329–39, provided that:

''SEC. 701. This title may be cited as 'Cuban Political Prisoners and Immigrants'.

''SEC. 702. (a) PROCESSING OF CERTAIN CUBAN POLITICAL PRISONERS AS REFUGEES.—In light of the announcement of the Government of Cuba on November 20, 1987, that it would reimplement immediately the agreement of December 14, 1984, establishing normal migration procedures between the United States and Cuba, on and after the date of enactment of this Act [Dec. 22, 1987], consular officer[s] of the Department of State and appropriate officers of the Immigration and Naturalization Service shall, in accordance with the procedures applicable to such cases in other countries, process any application for admission to the United States as a refugee from any Cuban national who was imprisoned for political reasons by the Government of Cuba on or after January 1, 1959, without regard to the duration of such imprisonment, except as may be necessary to reassure the orderly process of available applicants.

''(b) PROCESSING OF IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN THIRD COUNTRIES.—Notwithstanding section 212(f) and section 243(g) of the Immigration and Nationality Act [8 U.S.C. 1182(f), 1253(g)], on and after the date of the enactment of this Act [Dec. 22, 1987], consular officers of the Department of State shall process immigrant visa applications by nationals of Cuba located in third countries on the same basis as immigrant visa applications by nationals of other countries.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'process' means the acceptance and review of applications and the preparation of necessary documents and the making of appropriate determinations with respect to such applications.

''(2) The term 'refugee' has the meaning given such term in section 101(a)(42) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(42)].''

CROSS REFERENCES

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 of this title.

Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain physical disabilities, see section 1183 of this title.
Exaction from excludable aliens applying for temporary admission, see section 1182 of this title.
Forms to be prescribed by Attorney General, see section 1103 of this title.
Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Consular officer, see section 1101(a)(9) of this title.
Crewman, see section 1101(a)(10) of this title.
Diplomatic visa, see section 1101(a)(11) of this title.
Entry, see section 1101(a)(13) of this title.
Immigrant, see section 1101(a)(15) of this title.
Immigrant visa, see section 1101(a)(16) of this title.
Immigration officer, see section 1101(a)(18) of this title.
National, see section 1101(a)(21) of this title.
National of the United States, see section 1101(a)(22) of this title.
Nonimmigrant alien, see section 1101(a)(15) of this title.
Nonimmigrant visa, see section 1101(a)(26) of this title.
Passport, see section 1101(a)(30) of this title.
United States, see section 1101(a)(38) of this title.
Passports, see section 211a et seq. of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1230, 1301, 1302 of this title.

§ 1201a. Repealed. Pub. L. 99–653, § 5(b), formerly § 5(a)(d), Nov. 14, 1986, 100 Stat. 3656, renumbered § 5(b), Pub. L. 100–525, § 8(d)(2), Oct. 24, 1988, 102 Stat. 2617

Section, Pub. L. 85–316, § 8, Sept. 11, 1957, 71 Stat. 641, related to waiver of fingerprinting requirements for nonimmigrant aliens.

EFFECTIVE DATE OF REPEAL

Repeal applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as an Effective Date of 1986 Amendment note under section 1201 of this title.

§ 1202. Application for visas

(a) Immigrant visas

Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(b) Other documentary evidence for immigrant visa

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain.

(c) Nonimmigrant visas; nonimmigrant registration; form, manner and contents of application

Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; personal description (including height, complexion, color of hair and eyes, and marks of identification); his marital status; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(d) Other documentary evidence for nonimmigrant visa

Every alien applying for a nonimmigrant visa and alien registration shall furnish to the consular officer, with his application, a certified copy of such documents pertaining to him as may be by regulations required.

(e) Signing and verification of application

Except as may be otherwise prescribed by regulations, each application required by this section shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. The application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp placed by the consular officer in the alien's passport.

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that

the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

(June 27, 1952, ch. 477, title II, ch. 3, § 222, 66 Stat. 193; Sept. 26, 1961, Pub. L. 87–301, § 6, 75 Stat. 653; Oct. 3, 1965, Pub. L. 89–236, § 11(c), 79 Stat. 918; Nov. 14, 1986, Pub. L. 99–653, § 6, 100 Stat. 3656; Oct. 24, 1988, Pub. L. 100–525, §§ 8(e), 9(j), 102 Stat. 2617, 2620; Oct. 25, 1994, Pub. L. 103–416, title II, § 205(a), 108 Stat. 4311.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–416, § 205(a), in second sentence substituted ''the alien'' for ''the immigrant'' after ''In the application'' and struck out ''present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section 1151(b) of this title or a preference or special immigrant, the facts on which he bases such claim; whether or not he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws;'' before ''and such additional information''.

1988—Subsec. (a). Pub. L. 100–525, § 9(j), substituted ''whether or not he intends'' for ''whether or not be intends''.

Subsecs. (b), (e). Pub. L. 100–525, § 8(e), made technical correction to Pub. L. 99–653, § 6. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–653, § 6(a), as amended by Pub. L. 100–525, § 8(e)(1), substituted ''a copy of'' for ''two copies of'', ''immigrant; a certified copy of'' for ''immigrant; two certified copies of'', ''and a certified copy of'' for ''and two certified copies of'', ''The copy of each'' for ''One copy of each'', and ''attached to the'' for ''attached to each copy of the''.

Subsec. (e). Pub. L. 99–653, § 6(b), as amended by Pub. L. 100–525, § 8(e)(2), substituted ''each application'' for ''each copy of an application'', ''The application for'' for ''One copy of the application for'', and ''the immigrant visa'' for ''the immigrant visa, and the other copy shall be disposed of as may be by regulations prescribed''.

1965—Subsec. (a). Pub L. 89–236 substituted ''an immediate relative within the meaning of section 1151 (b) of this title or a preference or special immigrant'', for ''preference quota or a nonquota immigrant''.

1961—Subsecs. (a), (c). Pub. L. 87–301 struck out requirement to state applicant's race and ethnic classification.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(b) of Pub. L. 103–416 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to applications made on or after the date of the enactment of this Act [Oct. 25, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(e) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

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

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.
- Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.
- Consular officer, see section 1101(a)(9) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigrant, see section 1101(a)(15) of this title.
- Immigrant visa, see section 1101(a)(16) of this title.
- Immigration laws, see section 1101(a)(17) of this title.
- National, see section 1101(a)(21) of this title.
- Nonimmigrant visa, see section 1101(a)(26) of this title.
- Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.
- Parent, as used in this subchapter and subchapter I of this title, see section 1101(b)(2) of this title.
- Passport, see section 1101(a)(30) of this title.
- Permits to enter, as used in section 1185, see section 1185(f) of this title.
- Residence, see section 1101(a)(33) of this title.
- Special immigrant, see section 1101(a)(27) of this title.
- Spouse, see section 1101(a)(35) of this title.
- Unmarried, see section 1101(a)(39) of this title.

Detention of aliens for observation and examination, see section 1222 of this title.

Registration and fingerprinting of alien applying for a visa, see section 1201 of this title.

Submission of alien seeking immigrant or nonimmigrant visa to physical and mental examination, see section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1201 of this title; title 22 section 4355.

§ 1203. Reentry permit

(a) Application; contents

(1) Any alien lawfully admitted for permanent residence, or (2) any alien lawfully admitted to the United States pursuant to clause 6 of section 3 of the Immigration Act of 1924, between July 1, 1924, and July 5, 1932, both dates inclusive, who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States, stating the length of his intended absence or absences, and the reasons therefor. Such applications shall be made under oath, and shall be in such form, contain such information, and be accompanied by such photographs of the applicant as may be by regulations prescribed.

(b) Issuance of permit; nonrenewability

If the Attorney General finds (1) that the applicant under subsection (a)(1) of this section has been lawfully admitted to the United States for permanent residence, or that the applicant under subsection (a)(2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than two years from the date of issuance and shall not be renewable. The permit shall be in such form as shall be by regulations prescribed for the complete identification of the alien.

(c) Multiple reentries

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

(d) Presented and surrendered

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

(e) Permit in lieu of visa

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

CROSS REFERENCES

Cost of maintenance not to be assessed upon arrival of alien with unexpired reentry permit, see section 1227 of this title.

Definition of alien, Attorney General, entry, immigration laws, immigration officer, lawfully admitted for permanent residence, and United States, see section 1101 of this title.

Readmission without reentry permit of certain aliens who depart from United States temporarily, see section 1181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1352 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; Oct. 3, 1965, Pub. L. 89–236, § 11(d), 79 Stat. 918.)

AMENDMENTS

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

CROSS REFERENCES

Definition of consular officer, immigrant visa, special immigrant, see section 1101 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—PROVISIONS RELATING TO ENTRY AND EXCLUSION

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

(a) Shipment or aircraft manifest; arrival; form and contents; exclusions

Upon the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any such person on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests of the persons on board such vessel or aircraft. Such lists or manifests shall be prepared at such time, be in such form and shall contain such information as the Attorney General shall prescribe by regulation as being necessary for the identification of the persons transported and for the enforcement of the immigration laws. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating

(1) to an alien crewman or (2) to any other person arriving by air on a trip originating in foreign contiguous territory, except (with respect to such arrivals by air) as may be required by regulations issued pursuant to section 1229 of this title.

(b) Departure; shipment or aircraft manifest; form and contents; exclusions

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 1229 of this title.

(c) 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.

(d) Penalties against noncomplying shipments or aircraft

If it shall appear to the satisfaction of the Attorney General that the master or commanding officer, owner, or consignee of any vessel or aircraft, or the agent of any transportation line, as the case may be, has refused or failed to deliver any list or manifest required by subsection (a) or (b) of this section, or that the list or manifest delivered is not accurate and full, such master or commanding officer, owner, or consignee, or agent, as the case may be, shall pay to the Commissioner the sum of $300 for each person concerning whom such accurate and full list or manifest is not furnished, or concerning whom the manifest or list is not prepared and sworn to as prescribed by this section or by regulations issued pursuant thereto. No 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.

(e) Waiver of requirements

The Attorney General is authorized to prescribe the circumstances and conditions under which the list or manifest requirements of subsections (a) and (b) of this section may be waived.

(June 27, 1952, ch. 477, title II, ch. 4, § 231, 66 Stat. 195; Dec. 29, 1981, Pub. L. 97–116, § 18(g), 95 Stat. 1620; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(1), 104 Stat. 5057; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(4)(A), 105 Stat. 1752.)

AMENDMENTS

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 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.

CROSS REFERENCES

Bonds—
- Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 of this title.
- Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain physical disabilities, see section 1183 of this title.
- Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 of this title.
- Exaction from excludable aliens applying for temporary admission, see section 1182 of this title.

Forms to be prescribed by Attorney General, see section 1103 of this title.
Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Crewman, see section 1101(a)(10) of this title.
Immigration laws, see section 1101(a)(17) of this title.
Immigration officer, see section 1101(a)(18) of this title.
National, see section 1101(a)(21) of this title.
National of the United States, see section 1101(a)(22) of this title.
Permanent, see section 1101(a)(31) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.
Unmarried, see section 1101(a)(39) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1222. Detention of aliens for observation and examination upon arrival

For the purpose of determining whether aliens (including alien crewmen) arriving at ports of the United States belong to any of the classes excluded by 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 the excluded classes.

(June 27, 1952, ch. 477, title II, ch. 4, § 232, 66 Stat. 196; Oct. 18, 1986, Pub. L. 99–500, § 101(b) [title II, § 206(a), formerly § 206], 100 Stat. 1783–39, 1783–56, renumbered § 206(a), Oct. 24, 1988, Pub. L. 100–525, § 4(b)(1), 102 Stat. 2615; Oct. 30, 1986, Pub. L. 99–591, § 101(b) [title II, § 206], 100 Stat. 3341–39, 3341–56; Oct. 24, 1988, Pub. L. 100–525, § 4(b)(2), (d), 102 Stat. 2615.)

AMENDMENTS

1988—Pub. L. 100–525 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 1988 AMENDMENT

Amendment by section 4(b)(1), (2) of Pub. L. 100–525 effective as if included in enactment of Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Pub. L. 99–500), see section 4(c) of Pub. L. 100–525, set out as a note under section 1227 of this title.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, and immigration officer, see section 1101 of this title.

§ 1223. Repealed. 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

Section, 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.

Pub. L. 99–591, § 101(b) [title II, § 206], Oct. 30, 1986, 100 Stat. 3341–56, formerly listed as one of two laws which repealed this section, was itself repealed by Pub. L. 100–525, § 4(d), Oct. 24, 1988, 102 Stat. 2615, effective as of Oct. 30, 1986.

§ 1224. Physical and mental examinations; appeal of findings

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 special inquiry officers, 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 excludable 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.

(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.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''paragraph (1)'' for ''paragraphs (1), (2), (3), (4), or (5)'' wherever appearing.

1988—Pub. L. 100–525 substituted ''Secretary of Health and Human Services'' for ''Surgeon General of the United States Public Health Service'' wherever appearing.

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.

DESIGNATION OF UNITED STATES MILITARY PHYSICIANS AS CIVIL SURGEONS

Pub. L. 102–484, div. A, title X, § 1079, Oct. 23, 1992, 106 Stat. 2514, 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 234 of the Immigration and Nationality Act (8 U.S.C. 1224) of special immigrants described in section 101(a)(27)(K) of such Act (8 U.S.C. 1101(a)(27)(K)).''

CROSS REFERENCES

Definition of alien, Attorney General, crewman, entry, immigration officer, and special inquiry officer, see section 1101 of this title.

Public Health Service, see section 201 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1226 of this title.

§ 1225. Inspection by immigration officers

(a) Powers of officers

The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are authorized and empowered 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. The Attorney General and any immigration officer, including special inquiry officers, 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, pass 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, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 1182 of this title. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry 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. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry 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.

(b) Detention for further inquiry; challenge of favorable decision

Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 1323(d) of this title, who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. 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 land is so challenged, before a special inquiry officer for further inquiry.

(c) Temporary exclusion; permanent exclusion by Attorney General

Any alien (including an alien crewman) who may appear to the examining immigration officer or to the special inquiry officer during the examination before either of such officers to be excludable under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title shall be temporarily excluded, and no further inquiry by a special inquiry officer shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection therewith and such an inquiry or further inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer. Nothing in this subsection shall be regarded as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

(June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(11), 104 Stat. 5083.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–649 substituted ''subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title'' for ''paragraph (27), (28), or (29) of section 1182(a) of this title''.

EFFECTIVE DATE OF 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.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Contempts, see section 401 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101(a)(3) of this title.

Attorney General, see section 1101(a)(5) of this title.

Crewman, see section 1101(a)(10) of this title.

Entry, see section 1101(a)(13) of this title.

Immigration officer, see section 1101(a)(18) of this title.

National of the United States, see section 1101(a)(22) of this title.

Service, see section 1101(a)(34) of this title.

Special inquiry officer, see section 1101(b)(4) of this title.

United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1155, 1159, 1226, 1323 of this title.

§ 1226. Exclusion of aliens

(a) Proceedings

A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses. He shall have authority in any case to determine whether an arriving alien who has been detained for further inquiry under section 1225 of this title shall be allowed to enter or shall be excluded and deported. The determination of such special inquiry officer shall be based only on the evidence produced at the inquiry. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer under this section shall be conducted in accordance with this section, the applicable provisions of sections 1225 and 1357(b) of this title, and such regulations as the Attorney General shall prescribe, and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such inquiry, which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such inquiry, shall be kept.

(b) Appeal

From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General, and any such alien shall be advised of his right to take such appeal. No appeal may be taken from a temporary exclusion under section 1225(c) of this title. From a decision of the special inquiry officer to admit an alien, the immigration officer in charge at the port where the inquiry is held may take a timely appeal to the Attorney General. An appeal by the alien, or such officer in charge, shall operate to stay any final action with respect to any alien whose case is so appealed until the final decision of the Attorney General is made. Except as provided in section 1225(c) of this title such decision shall be rendered solely upon the evidence adduced before the special inquiry officer.

(c) Finality of decision of special inquiry officers

Except as provided in subsections (b) or (d) of this section, in every case where an alien is excluded from admission into the United States, under this chapter or any other law or treaty now existing or hereafter made, the decision of a special inquiry officer shall be final unless reversed on appeal to the Attorney General.

(d) Physical and mental defects

If a medical officer or civil surgeon or board of medical officers has certified under section 1224 of this title that an alien has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of section 1182(a) of this title, the decision of the special inquiry officer shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of a special inquiry officer.

(e) Custody of alien

(1) Pending a determination of excludability, the Attorney General shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense).

(2) Notwithstanding any other provision of this section, the Attorney General shall not release such felon from custody unless the Attorney General determines that the alien may not be deported because the condition described in section 1253(g) of this title exists.

(3) If the determination described in paragraph (2) has been made, the Attorney General may release such alien only after—

(A) a procedure for review of each request for relief under this subsection has been established,

(B) such procedure includes consideration of the severity of the felony committed by the alien, and

(C) the review concludes that the alien will not pose a danger to the safety of other persons or to property.

(June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200; Nov. 29, 1990, Pub. L. 101–649, title V, § 504(b), title VI, § 603(a)(12), 104 Stat. 5050, 5083; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(a)(5), 105 Stat. 1751.)

AMENDMENTS

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 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.

CROSS REFERENCES

Definition of alien, Attorney General, entry, immigration officer, and special inquiry officer, see section 1101 of this title.

Judicial review of orders of exclusion, see section 1105a of this title.

Revocation of approval of certain petitions, notice, see section 1155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105a, 1155, 1159, 1323 of this title; title 18 section 4113.

§ 1227. Immediate deportation of aliens excluded from admission or entering in violation of law

(a) Maintenance expenses

(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported, in accommodations of the same class in which he arrived, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. Deportation shall be to the country in which the alien boarded the vessel or aircraft on which he arrived in the United States, unless the alien boarded such vessel or aircraft in foreign territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, subject or national of, or does not have a residence in, such foreign contiguous territory or adjacent island, in which case the deportation shall instead be to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

(2) If the government of the country designated in paragraph (1) will not accept the alien into its territory, the alien's deportation shall be directed by the Attorney General, in his discretion and without necessarily giving any priority or preference because of their order as herein set forth, either to—

(A) the country of which the alien is a subject, citizen, or national;

(B) the country in which he was born;

(C) the country in which he has a residence; or

(D) any country which is willing to accept the alien into its territory, if deportation to any of the foregoing countries is impracticable, inadvisable, or impossible.

(b) Unlawful practice of transportation lines

It shall be unlawful for any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman), ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the airport of arrival of the aircraft when required by this chapter or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country to which his deportation has been directed; (4) to fail to pay the cost of his maintenance while being detained as re-

quired by this section; (5) to take any fee, deposit, or consideration on a contingent basis to be kept or returned in case the alien is landed or excluded; or (6) knowingly to bring to the United States any alien (other than an alien crewman) excluded or arrested and deported under any provision of law until such alien may be lawfully entitled to reapply for admission to the United States. If it shall appear to the satisfaction of the Attorney General that any such master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft has violated any of the provisions of this section, such master, commanding officer, purser, person in charge, agent, owner, or consignee shall pay to the Commissioner the sum of $2,000 for each violation. No such vessel or aircraft shall have clearance from any port of the United States while any such fine is unpaid or while the question of liability to pay any such fine is being determined, nor shall any such fine 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 fine.

(c) Transportation expense of deportation

An alien shall be deported on a vessel or aircraft owned by the same person who owns the vessel or aircraft on which the alien arrived in the United States, unless it is impracticable to so deport the alien within a reasonable time. The transportation expense of the alien's deportation shall be borne by the owner or owners of the vessel or aircraft on which the alien arrived. If the deportation is effected on a vessel or aircraft not owned by such owner or owners, the transportation expense of the alien's deportation may be paid from the appropriation for the enforcement of this chapter and recovered by civil suit from any owner, agent, or consignee of the vessel or aircraft on which the alien arrived.

(d) Stay of deportation; payment of maintenance expenses

The Attorney General, under such conditions as are by regulations prescribed, may stay the deportation of any alien deportable under this section, if in his judgment the testimony of such alien is necessary on behalf of the United States in the prosecution of offenders against any provision of this chapter or other laws of the United States. The cost of maintenance of any person so detained resulting from a stay of deportation under this subsection and a witness fee in the sum of $1 per day for each day such person is so detained may be paid from the appropriation for the enforcement of this subchapter. Such alien may be released under bond in the penalty of not less than $500 with security approved by the Attorney General on condition that such alien shall be produced when required as a witness and for deportation, and on such other conditions as the Attorney General may prescribe.

(e) Deportation of alien accompanying physically disabled alien

Upon the certificate of an examining medical officer to the effect that an alien ordered to be excluded and deported under this section is helpless from sickness or mental and physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by the alien ordered excluded and deported, such accompanying alien may also be excluded and deported, and the master, commanding officer, agent, owner, or consignee of the vessel or aircraft in which such alien and accompanying alien arrived in the United States shall be required to return the accompanying alien in the same manner as other aliens denied admission and ordered deported under this section.

(June 27, 1952, ch. 477, title II, ch. 4, §237, 66 Stat. 201; Dec. 29, 1981, Pub. L. 97–116, §7, 95 Stat. 1615; Oct. 18, 1986, Pub. L. 99–500, §101(b) [title II, §206(b)(2)], as added Oct. 24, 1988, Pub. L. 100–525, §4(b)(4), 102 Stat. 2615; Oct. 24, 1988, Pub. L. 100–525, §9(*l*), 102 Stat. 2620; Nov. 29, 1990, Pub. L. 101–649, title V, §543(a)(2), 104 Stat. 5057; Dec. 12, 1991, Pub. L. 102–232, title III, §306(c)(4)(B), 105 Stat. 1752.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–232 substituted "Commissioner" for "district director of customs" after "deposit with the".

1990—Subsec. (b). Pub. L. 101–649 substituted "Commissioner the sum of $2,000" for "district director of customs of the district in which port of arrival is situated or in which any vessel or aircraft of the line may be found, the sum of $300".

1988—Subsec. (b). Pub. L. 100–525, §9(*l*), substituted "to be kept" for "to ke kept" in cl. (5).

Pub. L. 100–525, §4(b)(4), added Pub. L. 99–500, §101(b) [title II, §206(b)(2)]. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–500, §101(b) [title II, §206(b)(2)], as added by Pub. L. 100–525, §4(b)(4), struck out "or section 1223 of this title" after "by this section" and "or of section 1223 of this title" after "of this section".

1981—Subsec. (a). Pub. L. 97–116, §7(a), designated existing provision as par. (1), substituted provision permitting the Attorney General flexibility as to which countries the alien can be deported to for provision which required that the alien be deported to the country from whence he came, redesignated cls. (1), (2), and (3) as cls. (A), (B), and (C), respectively, and subcl. (A) and (B) as subcls. (i) and (ii), respectively, and added par. (2).

Subsec. (b). Pub. L. 97–116, §7(b), substituted in cl. (3) "to the country to which his deportation has been directed" for "to the country from whence he came" and in provisions following cl. (6) "district director of customs" for "collector of customs" in two places.

Subsec. (c). Pub. L. 97–116, §7(c), struck out requirement that the vessel or aircraft on which the alien arrived has left the United States before another vessel or aircraft owned or operated by the same person be used for deportation and clarified party, as owner, agent, or consignee of the vessel or aircraft on which the alien arrived, as one against whom civil suit will be enforced if funds appropriated for enforcement of this chapter are used for the alien's deportation.

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.

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 1222, 1223, 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).''

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.

CROSS REFERENCES

Bond or undertaking with collector of customs as prerequisite to granting clearance prior to determination of question involving delivery of lists or manifests, see section 1221 of this title.

Definition of the term—

Alien, see section 1101(a)(3) of this title.

Attorney General, see section 1101(a)(5) of this title.

Crewman, see section 1101(a)(10) of this title.

Entry, see section 1101(a)(13) of this title.

Immigrant visa, see section 1101(a)(16) of this title.

Immigration officer, see section 1101(a)(18) of this title.

National of the United States, see section 1101(a)(22) of this title.

Nonimmigrant visa, see section 1101(a)(26) of this title.

Passport, see section 1101(a)(30) of this title.

Service, see section 1101(a)(34) of this title.

United States, see section 1101(a)(38) of this title.

Reentry permit—

Generally, see section 1203 of this title.

Readmission without reentry permit of certain aliens who depart from United States temporarily, see section 1181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1159, 1182, 1253, 1330 of this title.

§ 1228. Entry through or from foreign contiguous territory and adjacent islands

(a) Necessity of transportation contract

The Attorney General shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States from foreign contiguous 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 contiguous 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 bringing aliens to the United States, to foreign contiguous territory, or to adjacent islands.

(June 27, 1952, ch. 477, title II, ch. 4, § 238, 66 Stat. 202; Nov. 14, 1986, Pub. L. 99–653, § 7(b), 100 Stat. 3657.)

AMENDMENTS

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 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.

CROSS REFERENCES

Definition of adjacent islands, Attorney General, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1321, 1356 of this title.

§ 1229. Designation of ports of entry for aliens arriving by aircraft

The Attorney General is authorized (1) by regulation to designate as ports of entry for aliens arriving by aircraft any of the ports of entry for civil aircraft designated as such in accordance with law; (2) by regulation to provide such reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing, or notice of landing, as shall be deemed necessary for purposes of administration and enforcement of this chapter; and (3) by regulation to provide for the application to civil air navigation of the provisions of this chapter where not expressly so provided in this chapter to such extent and upon such conditions as he deems necessary. Any person who violates any regulation made under this section shall be subject to a civil penalty of $2,000 which may be remitted or mitigated by the Attorney General in accordance with such proceedings as the Attorney General shall by regulation prescribe. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft, and such aircraft may be libeled therefore in the appropriate United States court. The determination by the Attorney General and remission or mitigation of the civil penalty shall be final. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a

lien upon the aircraft and may be collected by proceedings in rem which shall conform as nearly as may be to civil suits in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings against aircraft in any particular not otherwise provided by law. Any aircraft made subject to a lien by this section may be summarily seized by, and placed in the custody of such persons as the Attorney General may by regulation prescribe. The aircraft may be released from such custody upon deposit of such amount not exceeding $2,000 as the Attorney General may prescribe, or of a bond in such sum and with such sureties as the Attorney General may prescribe, conditioned upon the payment of the penalty which may be finally determined by the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 4, § 239, 66 Stat. 203; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(3), 104 Stat. 5058; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(2), 105 Stat. 1752.)

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.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Definition of alien, Attorney General, and entry, see section 1101 of this title.

Designation of ports of entry for civil aircraft, see section 1644a of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1221, 1330 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 entry 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, § 240, 66 Stat. 204.)

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigrant, see section 1101(a)(15) of this title.
- Immigrant visa, see section 1101(a)(16) of this title.
- Immigration laws, see section 1101(a)(17) of this title.
- Immigration officer, see section 1101(a)(18) of this title.
- Nonimmigrant alien, see section 1101(a)(15) of this title.
- United States, see section 1101(a)(38) of this title.

PART V—DEPORTATION; ADJUSTMENT OF STATUS

CROSS REFERENCES

Registration provisions pertaining to persons trained in foreign espionage systems, deportation in manner provided by this part for violation of, see section 855 of Title 50, War and National Defense.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1306, 1361 of this title; title 50 section 855.

§ 1251. Deportable aliens

(a) Classes of deportable aliens

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

(1) Excludable at time of entry or of adjustment of status or violates status

(A) Excludable aliens

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

(B) Entered without inspection

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.

(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 the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Failure to maintain employment

Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 1161[1] of this title who fails to meet the requirement of section 1161(d)(5)(A)[1] of this title by the end of the applicable period is deportable.

(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 entry 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 entry of the alien and which, within 2 years subsequent to any entry 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 entry as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry 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) 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 entry 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.

A waiver of deportation for fraud or misrepresentation granted under this subparagraph shall also operate to waive deportation based on the grounds of inadmissibility at entry 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(i)[1] of this title) after the date of entry, and

(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,

is deportable.

[1] See References in Text note below.

(ii) Multiple criminal convictions

Any alien who at any time after entry 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 entry is deportable.

(iv) Waiver authorized

Clauses (i), (ii), and (iii) 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 entry 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 entry has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after entry 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.

(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

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

(4) Security and related grounds

(A) In general

Any alien who has engaged, is engaged, or at any time after entry 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 has engaged, is engaged, or at any time after entry engages in any terrorist activity (as defined in section 1182(a)(3)(B)(iii) 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 excludability under section 1182(a)(3)(C)(i) of this title.

(D) Assisted in Nazi persecution or engaged in genocide

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

(5) Public charge

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

(b) Deportation of certain nonimmigrants

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

(c) Waiver of grounds for deportation

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

(June 27, 1952, ch. 477, title II, ch. 5, § 241, 66 Stat. 204; July 18, 1956, ch. 629, title III, § 301(b), (c), 70 Stat. 575; July 14, 1960, Pub. L. 86–648, § 9, 74 Stat. 505; Sept. 26, 1961, Pub. L. 87–301, § 16, 75 Stat. 655; Oct. 3, 1965, Pub. L. 89–236, § 11(e), 79 Stat. 918; Oct. 20, 1976, Pub. L. 94–571, § 7(e), 90 Stat. 2706; Oct. 30, 1978, Pub. L. 95–549, title I, § 103, 92 Stat. 2065; Dec. 29, 1981, Pub. L. 97–116, § 8, 95 Stat. 1616; Oct. 27, 1986, Pub. L. 99–570, title I, § 1751(b), 100 Stat. 3207–47; Nov. 6, 1986, Pub. L. 99–603, title III, § 303(b), 100 Stat. 3431; Nov. 10, 1986, Pub. L. 99–639, § 2(b), 100 Stat. 3541; Nov. 14, 1986, Pub. L. 99–653, § 7(c), 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, §§ 2(n)(2), 9(m), 102 Stat. 2613, 2620; Nov. 18, 1988, Pub. L. 100–690, title VII, §§ 7344(a), 7348(a), 102 Stat. 4470, 4473; Nov. 29, 1990, Pub. L. 101–649, title I, § 153(b), title V, §§ 505(a), 508(a), 544(b), title VI, § 602(a), (b), 104 Stat. 5006, 5050, 5051, 5061, 5077, 5081; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 302(d)(3), 307(h), (k), 105 Stat. 1745, 1755, 1756; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(d), 108 Stat. 2026; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 203(b), 219(g), 108 Stat. 4311, 4317.)

REFERENCES IN TEXT

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

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

Section 1161 of this title, referred to in subsec. (a)(1)(F), was repealed by Pub. L. 103–416, title II, § 219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

Section 1255(i) of this title, referred to in subsec. (a)(2)(A)(i)(I), probably means the subsec. (i) of section 1255 which was added by section 130003(c)(1) of Pub. L. 103–322.

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.

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(4)(C). Pub. L. 102–232, § 307(h)(10), substituted ''excludability'' for ''excluability''.

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

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

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

Pub. L. 102–232, § 302(d)(3), struck out comma after ''(3)(A)''.

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

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

Pub. L. 101–649, §508(a), substituted ''conspiracy or attempt'' for ''conspiracy'' in par. (11).

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(11). Pub. L. 99–570 substituted ''any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)'' for ''any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate''.

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

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

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

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

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

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

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

1960—Subsec. (a)(11). Pub. L. 86–648 inserted ''or marihuana'' after ''narcotic drugs''.

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

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

EFFECTIVE DATE OF 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) ap-

plicable 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 as a note under section 1161 of this title.

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) of the Immigration and Nationality Act [8 U.S.C. 1251(a)], 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 under section 1161 of this title], 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.''

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:

''(a) IN GENERAL.—The Attorney General shall submit to the appropriate Committees of the Congress, by not later than December 1, 1991, a report that describes the efforts of the Immigration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States.

''(b) CRIMINAL ALIEN CENSUS.—Such report shall include a statement of—

''(1) the number of aliens in the United States who have been convicted of a criminal offense in the United States, and, of such number, the number of such aliens who are not lawfully admitted to the United States;

''(2) the number of aliens lawfully admitted to the United States who have been convicted of such an offense and, based on such conviction, are subject to deportation from the United States;

''(3) the number of aliens in the United States who are incarcerated in a penal institution in the United States, and, of such number, the number of such aliens who are not lawfully admitted to the United States;

''(4)(A) the number of aliens whose deportation hearings have been conducted pursuant to section 242A(a) of the Immigration and Nationality Act [8 U.S.C. 1252a(a)], and (B) the percentage that such number represents of the total number of deportable aliens with respect to whom a hearing under such section could have been conducted since November 18, 1988; and

''(5) the number of aliens in the United States who have reentered the United States after having been convicted of a criminal offense in the United States.

Within each of the numbers of aliens specified under this subsection who have been convicted of criminal offenses, the Attorney General shall distinguish between criminal offenses that are aggravated felonies (as defined in section 101(a)(43) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(43)], as amended by this Act) and other criminal offenses.

''(c) CRIMINAL ALIEN REMOVAL PLAN.—The Attorney General shall include in the report a plan for the prompt removal from the United States of criminal aliens who are subject to exclusion or deportation. Such plan shall also include a statement of additional funds that would be required to provide for the prompt removal from the United States of—

''(1)(A) aliens who are not lawfully admitted to the United States and who, as of the date of the enactment of this Act [Nov. 29, 1990], have committed any criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, as of such date, have committed a criminal offense in the United States the commission of which makes the alien subject to deportation; and

''(2)(A) aliens who are not lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States the commission of which makes the alien subject to deportation.

Such plan shall also include a method for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.''

CROSS REFERENCES

Conspiracy, see section 371 et seq. of Title 18, Crimes and Criminal Procedure.

Convicted aliens, deportation after imprisonment, see section 1252 of this title.

Definition of the term—

Adjacent islands, see section 1101(b)(5) of this title.

Advocates, see section 1101(a)(2) of this title.

Advocating a doctrine, see section 1101(e)(1) of this title.

Advocating the doctrines of world communism, see section 1101(e)(3) of this title.

Affiliation, see section 1101(e)(2) of this title.

Alien, see section 1101(a)(3) of this title.

Attorney General, see section 1101(a)(5) of this title.

Crewman, see section 1101(a)(10) of this title.

Doctrine, see section 1101(a)(12) of this title.

Entry, see section 1101(a)(13) of this title.

Foreign state, see section 1101(a)(14) of this title.

Immigrant, see section 1101(a)(15) of this title.

Immigrant visa, see section 1101(a)(16) of this title.

Immigration laws, see section 1101(a)(17) of this title.

Nonimmigrant alien, see section 1101(a)(15) of this title.

Organization, see section 1101(a)(28) of this title.

Service, see section 1101(a)(34) of this title.

Totalitarian party and totalitarian dictatorship, see section 1101(a)(37) of this title.

United States, see section 1101(a)(38) of this title.

Unmarried, see section 1101(a)(39) of this title.

World communism, see section 1101(a)(40) of this title.

Diplomatic and semidiplomatic immunities, see section 1102 of this title.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

Principals, see section 2 of Title 18, Crimes and Criminal Procedures.

Reprieves and pardons, power of President to grant, see Const. Art. II, § 2, cl. 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1252a, 1253, 1254, 1364 of this title; title 22 sections 618, 2508; title 42 section 402.

§ 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 sections 1182(h) and 1251(f) of this title.

§ 1252. Apprehension and deportation of aliens

(a) Arrest and custody; review of determination by court; aliens committing aggravated felonies; report to Congressional committees

(1) Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Except as provided in paragraph (2), any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (A) be continued in custody; or (B) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (C) be released on conditional parole. But such bond or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody under the warrant which initiated the proceedings against him and detained until final determination of his deportability. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability.

(2)(A) The Attorney General shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense). Notwithstanding paragraph (1) or subsections (c) and (d) of this section but subject to subparagraph (B), the Attorney General shall not release such felon from custody.

(B) The Attorney General may not release from custody any lawfully admitted alien who has been convicted of an aggravated felony, either before or after a determination of deportability, unless the alien demonstrates to the satisfaction of the Attorney General that such alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.

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

(i) 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;

(ii) to designate and train officers and employees of the Service within each district 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

(iii) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony and who have been deported; such record shall be made available to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any such previously deported alien seeking to reenter the United States.

(B) The Attorney General shall submit reports to the Committees on the Judiciary of the House of Representatives and of the Senate at the end of the 6-month period and at the end of the 18-month period beginning on the effective date of this paragraph which describe in detail specific efforts made by the Attorney General to implement this paragraph.

(b) Proceedings to determine deportability; removal expenses

A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that are consistent with section 1252b of this title and that provide that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held,

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

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence on his own behalf, and to cross-examine witnesses presented by the Government, and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

Except as provided in section 1252a(d) of this title, the procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this chapter, or of any other law or treaty, the decision of the Attorney General shall be final. In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraph (2), (3), or (4) of section 1251(a) of this title. If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal 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.

(c) Final order of deportation; place of detention

When a final order of deportation under administrative processes is made against any alien, the Attorney General shall have a period of six months from the date of such order, or, if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other condition as the Attorney General may prescribe. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or other release during such six-month period upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to effect

such alien's departure from the United States within such six-month period. If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States under the order of deportation has not been effected, within such six-month period, the alien shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section. The Attorney General is authorized and directed to arrange for appropriate places of detention for those aliens whom he shall take into custody and detain under this section. Where no Federal buildings are available or buildings adapted or suitably located for the purpose are available for rental, the Attorney General is authorized, notwithstanding section 5 of title 41 or section 278a[1] of title 40 to expend, from the appropriation provided for the administration and enforcement of the immigration laws, such amounts as may be necessary for the acquisition of land and the erection, acquisition, maintenance, operation, remodeling, or repair of buildings, sheds, and office quarters (including living quarters for officers where none are otherwise available), and adjunct facilities, necessary for the detention of aliens. For the purposes of this section an order of deportation heretofore or hereafter entered against an alien in legal detention or confinement, other than under an immigration process, shall be considered as being made as of the moment he is released from such detention or confinement, and not prior thereto.

(d) Supervision of deportable alien; violation by alien

Any alien, against whom a final order of deportation as defined in subsection (c) of this section heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both.

(e) Penalty for willful failure to depart; suspension of sentence

Any alien against whom a final order of deportation is outstanding by reason of being a member of any of the classes described in section 1251(a) of this title, who shall willfully fail or refuse to depart from the United States within a period of six months from the date of the final order of deportation under administrative processes, or, if judicial review is had, then from the date of the final order of the court, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1251(a) of this title.:[2] *Provided*, That this subsection shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: *Provided further*, That the court may for good cause suspend the sentence of such alien and order his release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as (1) the age, health, and period of detention of the alien; (2) the effect of the alien's release upon the national security and public peace or safety; (3) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable; (4) the character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States; (5) the reason for the inability of the Government of the United States to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and (6) the eligibility of the alien for discretionary relief under the immigration laws.

(f) Unlawful reentry

Should the Attorney General find that any alien has unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation, whether before or after June 27, 1952, on any ground described in any of the paragraphs enumerated in subsection (e) of this section, the previous order of deportation shall be deemed to be reinstated from its original date and such alien shall be deported under such previous order at any time subsequent to such reentry. For the purposes of subsection (e) of this section the date on which the finding is made that such reinstatement is appropriate shall be deemed the date of the final order of deportation.

[1] See References in Text note below.

[2] So in original. The period preceding the colon probably should not appear.

(g) Voluntary deportation; payment of expenses

If any alien, subject to supervision or detention under subsections (c) or (d) of this section, is able to depart from the United States under the order of deportation, except that he is financially unable to pay his passage, the Attorney General may in his discretion permit such alien to depart voluntarily, and the expense of such passage to the country to which he is destined may be paid from the appropriation for the enforcement of this chapter, unless such payment is otherwise provided for under this chapter.

(h) Service of prison sentence prior to deportation

An alien sentenced to imprisonment shall not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

(i) Expeditious deportation of convicted aliens

In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.

(j) 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 and sentenced to a term of imprisonment; 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 such sums as may be necessary to carry out this subsection, of which the following amounts may be appropriated from the Violent Crime Reduction Trust Fund:

(A) $130,000,000 for fiscal year 1995;
(B) $300,000,000 for fiscal year 1996;
(C) $330,000,000 for fiscal year 1997;
(D) $350,000,000 for fiscal year 1998;
(E) $350,000,000 for fiscal year 1999; and
(F) $340,000,000 for fiscal year 2000.

(June 27, 1952, ch. 477, title II, ch. 5, § 242, 66 Stat. 208; Sept. 3, 1954, ch. 1263, § 17, 68 Stat. 1232; Dec. 29, 1981, Pub. L. 97–116, § 18(h)(1), 95 Stat. 1620; Oct. 12, 1984, Pub. L. 98–473, title II, § 220(b), 98 Stat. 2028; Nov. 6, 1986, Pub. L. 99–603, title VII, § 701, 100 Stat. 3445; Oct. 24, 1988, Pub. L. 100–525, § 9(n), 102 Stat. 2620; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7343(a), 102 Stat. 4470; Nov. 29, 1990, Pub. L. 101–649, title V, §§ 504(a), 545(e), title VI, § 603(b)(2), 104 Stat. 5049, 5066, 5085; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 306(a)(4), (c)(7), 307(m)(2), 309(b)(9), 105 Stat. 1751, 1753, 1757, 1759; Sept. 13, 1994, Pub. L. 103–322, title II, § 20301(a), title XIII, § 130001(a), 108 Stat. 1823, 2023; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 219(h), 224(b), 108 Stat. 4317, 4324.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (a)(3)(B), is the effective date of section 7343(a) of Pub. L. 100–690 which enacted subsec. (a)(3) of this section. See section 7343(c) of Pub. L. 100–690, set out as a note below.

Section 278a of title 40, referred to in subsec. (c), was repealed by Pub. L. 100–678, § 7, Nov. 17, 1988, 102 Stat. 4052.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416, § 224(b), substituted ''Except as provided in section 1252a(d) of this title, the'' for ''The'' in ninth sentence.

Subsec. (e). Pub. L. 103–322, § 130001(a), struck out ''paragraph (2), (3), or (4) of'' before ''section 1251(a) of this title'' and substituted ''shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1251(a) of this title.'' for ''shall be imprisoned not more than ten years''.

Subsec. (h). Pub. L. 103–416, § 219(h), substituted ''Parole,'' for ''Parole,,''.

Subsec. (j). Pub. L. 103–322, § 20301(a), added subsec. (j).

1991—Subsec. (a)(2)(B). Pub. L. 102–232, § 306(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Attorney General shall release from custody an alien who is lawfully admitted for permanent residence on bond or such other conditions as the Attorney General may prescribe if the Attorney General determines that the alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Subsec. (b). Pub. L. 102–232, § 306(c)(7), amended eighth sentence generally, substituting ''Such regulations shall include requirements that are consistent with

section 1252b of this title and that provide that—'' and pars. (1) to (4) for ''Such regulations shall include requirements consistent with section 1252b of this title.''

Subsec. (e). Pub. L. 102–232, § 307(m)(2), substituted ''paragraph (2), (3), or (4)'' for ''paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Subsec. (h). Pub. L. 102–232, § 309(b)(9), inserted a comma after ''Parole''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 504(a), designated existing text as subpar. (A), substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction'' and ''Notwithstanding paragraph (1) or subsections (c) and (d) of this section but subject to subparagraph (B)'' for ''Notwithstanding subsection (a) of this section'', and added subpar. (B).

Subsec. (b). Pub. L. 101–649, § 603(b)(2)(A), substituted ''(2), (3), or (4)'' for ''(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Pub. L. 101–649, § 545(e), amended eighth sentence generally. Prior to amendment, eighth sentence read as follows: ''Such regulations shall include requirements that—

''(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

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

''(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

''(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.''

Subsec. (e). Pub. L. 101–649, § 603(b)(2)(B), which directed the substitution of ''paragraph (2), (3) or (4)'' for ''paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

1988—Subsec. (a). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), any'' for ''Any'', redesignated cls. (1) to (3) as (A) to (C), respectively, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100–525 struck out ''or from September 23, 1950, whichever is the later,'' after ''from the date of the final order of the court,''.

1986—Subsec. (i). Pub. L. 99–603 added subsec. (i).

1984—Subsec. (h). Pub. L. 98–473, which directed that ''supervised release,'' be inserted after ''parole,'', was executed by inserting ''supervised release,'' after ''Parole,'' to reflect the probable intent of Congress.

1981—Subsec. (b). Pub. L. 97–116, § 18(h)(1)(A), substituted ''(18), or (19)'' for ''or (18)'' in provision following par. (4).

Subsec. (e). Pub. L. 97–116, § 18(h)(1)(B), substituted ''(18), or (19)'' for ''or (18)''.

1954—Subsec. (d). Act Sept. 3, 1954, struck out ''shall upon conviction be guilty of a felony.''

EFFECTIVE DATE OF 1994 AMENDMENTS

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

Section 224(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1252a of this title] shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act [Oct. 25, 1994].''

Section 20301(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(a)(4), (c)(7) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 307(m)(2) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 504(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1226 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

Amendment by section 545(e) of Pub. L. 101–649 effective on a date specified by Attorney General in certification to Congress of establishment of central address file system (described in section 1252b(a)(4) of this title), which date may not be earlier than 6 months after date of such certification, see section 545(g)(1) of Pub. L. 101–649, set out as a note under section 1252b of this title.

Amendment by section 603(b)(2) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7343(c) of Pub. L. 100–690 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1254 of this title] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

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

REGULATIONS

Section 545(d) of Pub. L. 101–649 provided that: ''Within 6 months after the date of the enactment of this Act [Nov. 29, 1990], the Attorney General shall issue regulations with respect to—

''(1) the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions; and

''(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.''

CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS

Nothing in subsec. (i) of this section to 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, see section 225 of Pub. L. 103–416, set out as a note under section 1101 of this title.

TERMINATION OF LIMITATION

Section 20301(c) of Pub. L. 103–322 provided that: ''Notwithstanding section 242(j)(5) of the Immigration and Nationality Act [8 U.S.C. 1252(j)(5)], as added by subsection (a), the requirements of section 242(j) of the Immigration and Nationality Act, as added by subsection (a), shall not be subject to the availability of appropriations on and after October 1, 2004.''

CRIMINAL ALIEN TRACKING CENTER

Section 130002 of Pub. L. 103–322 provided that:

''(a) OPERATION.—The Attorney General shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

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

''(1) $3,400,000 for fiscal year 1996;
''(2) $3,600,000 for fiscal year 1997;
''(3) $3,700,000 for fiscal year 1998;
''(4) $3,800,000 for fiscal year 1999; and
''(5) $3,900,000 for fiscal year 2000.''

EXPANDED SPECIAL DEPORTATION PROCEEDINGS

Section 130007 of Pub. L. 103–322 provided that:

''(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section 242A(d) [probably should be ''242A(a)(3)'', which is classified to 8 U.S.C. 1252a(a)(3)] and 242(i) [8 U.S.C. 1252(i)] of the Immigration and Nationality Act to ensure that such aliens are immediately deportable upon their release from incarceration.

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

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

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

''(c) REPORT.—By September 30, 1996, and September 30, 1998 the Attorney General shall report to the Congress on the programs referred to in subsections (a) and (b). The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].

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

''(1) $55,000,000 for fiscal year 1995;
''(2) $54,000,000 for fiscal year 1996;
''(3) $49,000,000 for fiscal year 1997; and
''(4) $2,000,000 for fiscal year 1998.''

AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Section 130008 of Pub. L. 103–322 provided that:

''(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, the Attorney General, in the discretion of the Attorney General, may accept, hold, administer, and utilize gifts of property and services (which may not include cash assistance) from State and local governments for the purpose of assisting the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanor or felony crimes under State or Federal law and who are either unlawfully within the United States or willing to submit to voluntary departure under safeguards. Any property acquired pursuant to this section shall be acquired in the name of the United States.

''(b) LIMITATION.—The Attorney General shall terminate or rescind the exercise of the authority under subsection (a) if the Attorney General determines that the exercise of such authority has resulted in discrimination by law enforcement officials on the basis of race, color, or national origin.''

CROSS REFERENCES

Conspiracy, see section 371 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101(a)(3) of this title.
Alien deported in pursuance of law, see section 1101(g) of this title.
Attorney General, see section 1101(a)(5) of this title.
Immigration laws, see section 1101(a)(17) of this title.
Immigration officer, see section 1101(a)(18) of this title.
National, see section 1101(a)(21) of this title.
Passport, see section 1101(a)(30) of this title.
Special inquiry officer, see section 1101(b)(4) of this title.
United States, see section 1101(a)(38) of this title.

Habeas corpus, see section 2241 et seq. of Title 28, Judiciary and Judicial Procedure.

Judicial review of orders of deportation, see section 1105a of this title.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

Sentences, see section 3551 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105a, 1182, 1184, 1252a, 1252b, 1255a, 1282, 1330, 1357 of this title; title 18 section 4113; title 22 sections 618, 2508; title 28 section 1821; title 40 section 613.

§ 1252a. Expedited deportation of aliens convicted of committing aggravated felonies

(a) Deportation of criminal aliens

(1) in general

The Attorney General shall provide for the availability of special deportation proceedings at certain Federal, State, and local correctional facilities for aliens convicted of aggravated felonies (as defined in section 1101(a)(43) of this title). Such proceedings shall be conducted in conformity with section 1252 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 deportation, where warranted, following the end of the alien's incarceration for the underlying sentence.

(2) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1252(a)(2) 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 deportation 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 deportation 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 deportation proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate deportation 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 deportation proceedings conducted under this section may adversely affect the ability of such aliens to contest deportation effectively.

(b) Deportation 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 1251(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of deportation pursuant to the procedures set forth in this subsection or section 1252(b) 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; and

(B) is not eligible for any relief from deportation under this chapter.

(3) The Attorney General may not execute any order described in paragraph (1) until 30 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 1105a 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 proccedings, as the alien shall choose;

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

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

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

(c) Repealed. Pub. L. 103–322, title XIII, § 130004(c)(4), Sept. 13, 1994, 108 Stat. 2028

(d) Judicial deportation

(1) Authority

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 1251(a)(2)(A) of this title, 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 deportation.

(B) Notwithstanding section 1252b 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 1251(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 deportation 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 1252(b) 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 deported if the Attorney General demonstrates that the alien is deportable under this chapter.

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

(A)(i) A judicial order of deportation 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 1105a of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the convic-

tion on which the order of deportation is based, the expiration of the period described in section 1105a(a)(1) of this title, or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

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

(4) Denial of judicial order

Denial without a decision on the merits of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 1252 of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1251(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 242A, as added Nov. 18, 1988, Pub. L. 100–690, title VII, § 7347(a), 102 Stat. 4471; amended Nov. 29, 1990, Pub. L. 101–649, title V, § 506(a), 104 Stat. 5050; Dec. 12, 1991, Pub. L. 102–232, title III, § 309(b)(10), 105 Stat. 1759; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130004(a), (c), 108 Stat. 2026, 2027; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 223(a), 224(a), 108 Stat. 4322.)

AMENDMENTS

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 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.

Amendment by Pub. L. 103–322 applicable to all aliens against whom deportation proceedings are initiated after Sept. 13, 1994, see section 130004(d) of Pub. L. 103–322, set out as a note under section 1105a of this title.

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].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1105a of this title.

§ 1252b. Deportation procedures

(a) Notices

(1) Order to show cause

In deportation proceedings under section 1252 of this title, written notice (in this section referred to as an ''order to show cause'') shall be given in person to the alien (or, if personal service is not practicable, such notice shall be given by certified 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 a 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 1252 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 subsection (c)(2) of this section of failure to provide address and telephone information pursuant to this subparagraph.

(2) Notice of time and place of proceedings

In deportation proceedings under section 1252 of this title—

(A) written notice shall be given in person to the alien (or, if personal service is not practicable, written notice shall be given by certified mail to the alien or to the alien's counsel of record, if any), in the order to show cause or otherwise, of—

(i) the time and place at which the proceedings will be held, and

(ii) the consequences under subsection (c) of this section of the failure, except under exceptional circumstances, to appear at such proceedings; and

(B) in the case of any change or postponement in the time and place of such proceedings, written notice shall be given in person to the alien (or, if personal service is not practicable, written notice shall be given by certified mail to the alien or to the alien's counsel of record, if any) of—

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

(ii) the consequences under subsection (c) of this section of failing, except under exceptional circumstances, to attend such proceedings.

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 subsection (a)(1)(F) of this section.

(3) Form of information

Each order to show cause or other notice under this subsection—

(A) shall be in English and Spanish, and

(B) shall specify that the alien may be represented by an attorney in deportation proceedings under section 1252 of this title and will be provided, in accordance with subsection (b)(1) of this section, a period of time in order to obtain counsel and a current list described in subsection (b)(2) of this section.

(4) 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 1252 of this title, the hearing date shall not be scheduled earlier than 14 days after the service of the order to show cause, 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 1252 of this title. Such lists shall be provided under subsection (a)(1)(E) of this section and otherwise made generally available.

(c) Consequences of failure to appear

(1) In general

Any alien who, after written notice required under subsection (a)(2) of this section has been provided to the alien or the alien's counsel of record, does not attend a proceeding under section 1252 of this title, shall be ordered deported under section 1252(b)(1) of this title in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is deportable. The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F) of this section.

(2) No notice if failure to provide address information

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

(3) Rescission of order

Such an order may be rescinded only—

(A) upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (f)(2) of this section), or

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

The filing of the motion to reopen described in subparagraph (A) or (B) shall stay the deportation of the alien pending disposition of the motion.

(4) Effect on judicial review

Any petition for review under section 1105a of this title of an order entered in absentia under this subsection shall, notwithstanding such section, be filed not later than 60 days (or 30 days in the case of an alien convicted of an aggravated felony) after the date of the final order of deportation and shall (except in cases described in section 1105a(a)(5) of this title) be confined to the issues of the validity of the notice provided to the alien, to the reasons for the alien's not attending the proceeding, and to whether or not clear, convincing, and unequivocal evidence of deportability has been established.

(d) Treatment of frivolous behavior

The Attorney General shall, by regulation—

(1) define in a proceeding before a special inquiry officer or before an appellate administrative body under this subchapter, frivolous behavior for which attorneys may be sanctioned,

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

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

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

(e) Limitation on discretionary relief for failure to appear

(1) At deportation proceedings

Any alien against whom a final order of deportation is entered in absentia under this section and who, at the time of the notice described in subsection (a)(2) of this section, 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 (f)(2) of this section) to attend a proceeding under section 1252 of this title, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date of the entry of the final order of deportation.

(2) Voluntary departure

(A) In general

Subject to subparagraph (B), any alien allowed to depart voluntarily under section 1254(e)(1) of this title or who has agreed to depart voluntarily at his own expense under section 1252(b)(1) of this title who remains in the United States after the scheduled date of departure, other than because of exceptional circumstances, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the scheduled date of departure or the date of unlawful reentry, respectively.

(B) Written and oral notice required

Subparagraph (A) shall not apply to an alien allowed to depart voluntarily unless, before such departure, the Attorney General has provided written notice to the alien in English and Spanish and oral notice either in the alien's native language or in another language the alien understands of the consequences under subparagraph (A) of the alien's remaining in the United States after the scheduled date of departure, other than because of exceptional circumstances.

(3) Failure to appear under deportation order

(A) In general

Subject to subparagraph (B), any alien against whom a final order of deportation is entered under this section and who fails, other than because of exceptional circumstances, to appear for deportation at the time and place ordered shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date the alien was required to appear for deportation.

(B) Written and oral notice required

Subparagraph (A) shall not apply to an alien against whom a deportation order is entered unless the Attorney General has provided, orally in the alien's native language or in another language the alien understands and in the final order of deportation under this section of the consequences under subparagraph (A) of the alien's failure, other than because of exceptional circumstances, to appear for deportation at the time and place ordered.

(4) Failure to appear for asylum hearing

(A) In general

Subject to subparagraph (B), any alien—

(i) whose period of authorized stay (if any) has expired through the passage of time,

(ii) who has filed an application for asylum, and

(iii) who fails, other than because of exceptional circumstances, to appear at the time and place specified for the asylum hearing,

shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date of the asylum hearing.

(B) Written and oral notice required

Subparagraph (A) shall not apply in the case of an alien with respect to a failure to be present at a hearing unless—

(i) written notice in English and Spanish, and oral notice either in the alien's native language or in another language the alien understands, was provided to the alien of the time and place at which the asylum hearing will be held, and in the case of any change or postponement in such time or place, written notice in English and Spanish, and oral notice either in the alien's native language or in another language the alien understands, was provided to the alien of the new time or place of the hearing; and

(ii) notices under clause (i) specified the consequences under subparagraph (A) of failing, other than because of exceptional circumstances, to attend such hearing.

(5) Relief covered

The relief described in this paragraph is—

(A) voluntary departure under section 1252(b)(1) of this title,

(B) suspension of deportation or voluntary departure under section 1254 of this title, and

(C) adjustment or change of status under section 1255, 1258, or 1259 of this title.

(f) Definitions

In this section:

(1) The term ''certified mail'' means certified mail, return receipt requested.

(2) The term ''exceptional circumstances'' refers to exceptional circumstances (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances) beyond the control of the alien.

(June 27, 1952, ch. 477, title II, ch. 5, § 242B, as added Nov. 29, 1990, Pub. L. 101–649, title V, § 545(a), 104 Stat. 5061; amended Dec. 12, 1991,

Pub. L. 102–232, title III, § 306(c)(6), 105 Stat. 1753; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(i), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–416 struck out comma after ''convincing evidence that''.

1991—Subsec. (a)(1)(E). Pub. L. 102–232, § 306(c)(6)(A), struck out '', upon request,'' after ''represented by counsel and''.

Subsec. (a)(2). Pub. L. 102–232, § 306(c)(6)(C), inserted at end ''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 subsection (a)(1)(F) of this section.''

Subsec. (a)(2)(A)(ii). Pub. L. 102–232, § 306(c)(6)(B), inserted '', except under exceptional circumstances,'' after ''failure''.

Subsec. (b)(1). Pub. L. 102–232, § 306(c)(6)(D), inserted before period at end '', unless the alien requests in writing an earlier hearing date''.

Subsec. (b)(2). Pub. L. 102–232, § 306(c)(6)(E), inserted ''pro bono'' after ''to represent'' and inserted at end ''Such lists shall be provided under subsection (a)(1)(E) of this section and otherwise made generally available.''

Subsec. (c)(1). Pub. L. 102–232, § 306(c)(6)(F)(i), (ii), struck out ''except as provided in paragraph (2),'' after ''counsel of record,'' and after ''convincing evidence that,'' and inserted at end ''The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F) of this section.''

Subsec. (c)(2). Pub. L. 102–232, § 306(c)(6)(F)(iii), struck out at end ''Such written notice shall be considered sufficient if provided at the most recent address provided under such subsection.''

Subsec. (c)(4). Pub. L. 102–232, § 306(c)(6)(G), inserted ''(or 30 days in the case of an alien convicted of an aggravated felony)'' after ''60 days''.

Subsec. (d). Pub. L. 102–232, § 306(c)(6)(H), substituted ''the Attorney General'' for ''the Board'' in last sentence.

Subsec. (e)(4)(B). Pub. L. 102–232, § 306(c)(6)(I), inserted ''a'' after ''with respect to''.

Subsec. (e)(5). Pub. L. 102–232, § 306(c)(6)(J), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''relief under section 1182(c) of this title,''.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE

Section 545(g) of Pub. L. 101–649 provided that:

''(1) NOTICE-RELATED PROVISIONS.—

''(A) Subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act [8 U.S.C. 1252b(a), (b), (c) and (e)(1)] (as inserted by the amendment made by subsection (a)), and the amendment made by subsection (e) [amending section 1252 of this title], shall be effective on a date specified by the Attorney General in the certification described in subparagraph (B), which date may not be earlier than 6 months after the date of such certification.

''(B) The Attorney General shall certify to the Congress when the central address file system (described in section 242B(a)(4) of the Immigration and Nationality Act) has been established.

''(C) The Comptroller General shall submit to Congress, within 3 months after the date of the Attorney General's certification under subparagraph (B), a report on the adequacy of such system.

''(2) CERTAIN LIMITS ON DISCRETIONARY RELIEF; SANCTIONS FOR FRIVOLOUS BEHAVIOR.—Subsections (d), (e)(2), and (e)(3) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on the date of the enactment of this Act [Nov. 29, 1990].

''(3) LIMITS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR IN ASYLUM HEARING.—Subsection (e)(4) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on February 1, 1991.

''(4) CONSOLIDATION OF RELIEF IN JUDICIAL REVIEW.—The amendments made by subsection (b) [amending section 1105a of this title] shall apply to final orders of deportation entered on or after January 1, 1991.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1252a of this title.

§ 1253. Countries to which aliens shall be deported

(a) Acceptance by designated country; deportation upon nonacceptance by country

The deportation of an alien in the United States provided for in this chapter, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent thereto or adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original inquiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject, national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either—

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or

(7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

(b) Deportation during war

If the United States is at war and the deportation, in accordance with the provisions of subsection (a) of this section, of any alien who is deportable under any law of the United States shall be found by the Attorney General to be impracticable, inadvisable, inconvenient, or impossible because of enemy occupation of the country from which such alien came or wherein is located the foreign port at which he embarked for the United States or because of reasons connected with the war, such alien may, in the discretion of the Attorney General, be deported as follows:

(1) if such alien is a citizen or subject of a country whose recognized government is in exile, to the country in which is located that government in exile if that country will permit him to enter its territory; or

(2) if such alien is a citizen or subject of a country whose recognized government is not in exile, then to a country or any political or territorial subdivision thereof which is proximate to the country of which the alien is a citizen or subject, or, with the consent of the country of which the alien is a citizen or subject, to any other country.

(c) Payment of deportation costs; within five years

If deportation proceedings are instituted at any time within five years after the entry of the alien for causes existing prior to or at the time of entry, the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this chapter, and the deportation from such port shall be at the expense of the owner or owners of the vessels, aircraft, or other transportation lines by which such alien came to the United States, or if in the opinion of the Attorney General that is not practicable, at the expense of the appropriation for the enforcement of this chapter: *Provided*, That the costs of the deportation of any such alien from such port shall not be assessed against the owner or owners of the vessels, aircraft, or other transportation lines in the case of any alien who arrived in possession of a valid unexpired immigrant visa and who was inspected and admitted to the United States for permanent residence. In the case of an alien crewman, if deportation proceedings are instituted at any time within five years after the granting of the last conditional permit to land temporarily under the provisions of section 1282 of this title, the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this chapter and the deportation from such port shall be at the expense of the owner or owners of the vessels or aircraft by which such alien came to the United States, or if in the opinion of the Attorney General that is not practicable, at the expense of the appropriation for the enforcement of this chapter.

(d) Cost of deportation, subsequent to five years

If deportation proceedings are instituted later than five years after the entry of the alien, or in the case of an alien crewman later than five years after the granting of the last conditional permit to land temporarily, the cost thereof shall be payable from the appropriation for the enforcement of this chapter.

(e) Refusal to transport or to pay

A failure or refusal on the part of the master, commanding officer, agent, owner, charterer, or consignee of a vessel, aircraft, or other transportation line to comply with the order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this chapter, or a failure or refusal by any such person to comply with an order of the Attorney General to pay deportation expenses in accordance with the requirements of this section, shall be punished by the imposition of a penalty in the sum and manner prescribed in section 1227(b) of this title.

(f) Payment of expenses of physically incapable deportees

When in the opinion of the Attorney General the mental or physical condition of an alien being deported is such as to require personal care and attendance, the Attorney General shall, when necessary, employ a suitable person for that purpose who shall accompany such alien to his final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed, and any failure or refusal to defray such expenses shall be punished in the manner prescribed by subsection (e) of this section.

(g) Countries delaying acceptance of deportees

Upon the notification by the Attorney General that any country upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject, or resident thereof, the Secretary of State shall instruct consular officers performing their duties in the territory of such country to discontinue the issuance of immigrant visas to nationals, citizens, subjects, or residents of such country, until such time as the Attorney General shall inform the Secretary of State that such country has accepted such alien.

(h) Withholding of deportation or return

(1) The Attorney General shall not deport or return any alien (other than an alien described in section 1251(a)(4)(D) of this title) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(C) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States; or

(D) there are reasonable grounds for regarding the alien as a danger to the security of the United States.

For purposes of subparagraph (B), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime.

(June 27, 1952, ch. 477, title II, ch. 5, § 243, 66 Stat. 212; Oct. 3, 1965, Pub. L. 89–236, § 11(f), 79 Stat. 918; Oct. 30, 1978, Pub. L. 95–549, title I, § 104, 92 Stat. 2066; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(e), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97–116, § 18(i), 95 Stat. 1620; Nov. 29, 1990, Pub. L. 101–649, title V, § 515(a)(2), title VI, § 603(b)(3), 104 Stat. 5053, 5085.)

AMENDMENTS

1990—Subsec. (h)(1). Pub. L. 101–649, § 603(b)(3), substituted ''1251(a)(4)(D)'' for ''1251(a)(19)''.

Subsec. (h)(2). Pub. L. 101–649, § 515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.

1981—Subsec. (a). Pub. L. 97–116 inserted a comma after ''subject'' in fourth sentence.

1980—Subsec. (h). Pub. L. 96–212 substituted provisions relating to deportation or return of an alien where the Attorney General determines that the return would threaten the life or freedom of the alien on account of race, religion, nationality, membership in a particular social group, or political opinion, for provisions relating to withholding of deportation for any necessary period of time where the Attorney General decides the alien would be subject to persecution on account of race, religion, or political opinion.

1978—Subsec. (h). Pub. L. 95–549 inserted ''(other than an alien described in section 1251(a) of this title)'' before ''within the United States''.

1965—Subsec. (h). Pub. L. 89–236 substituted ''persecution on account of race, religion, or political opinion'' for ''physical persecution''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 515(a)(2) of Pub. L. 101–649 applicable to convictions entered before, on, or after Nov. 29, 1990, and to applications for withholding of deportation made on or after such date, see section 515(b)(2) of Pub. L. 101–649, as amended, set out as a note under section 1158 of this title.

Amendment by section 603(b)(3) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS

Pub. L. 99–603, title III, § 315(c), Nov. 6, 1986, 100 Stat. 3440, provided that: ''It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(g) of the Immigration and Nationality Act (8 U.S.C. 1253(g)).''

CROSS REFERENCES

Definition of the term—

Adjacent islands, section 1101(b)(5) of this title.

Alien, see section 1101(a)(3) of this title.

Attorney General, see section 1101(a)(5) of this title.

Consular officer, see section 1101(a)(9) of this title.

Crewman, see section 1101(a)(10) of this title.

Immigrant visa, see section 1101(a)(16) of this title.

National, see section 1101(a)(21) of this title.

Permanent, see section 1101(a)(31) of this title.

Residence, see section 1101(a)(33) of this title.

United States, see section 1101(a)(38) of this title.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1226, 1252a, 1254a, 1330, 1427 of this title; title 7 section 2015; title 22 sections 618, 2508; title 42 section 1436a.

§ 1254. Suspension of deportation

(a) Adjustment of status for permanent residence; contents

As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 1251(a)(4)(D) of this title) who applies to the Attorney General for suspension of deportation and—

(1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;

(2) is deportable under paragraph (2), (3), or (4) of section 1251(a) of this title; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that

during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

(3) is deportable under any law of the United States except section 1251(a)(1)(G) of this title and the provisions specified in paragraph (2); 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; 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); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

(b) Continuous physical presence: inapplicability based on service in Armed Forces; brief, casual, and innocent absences

(1) The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four 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 his enlistment or induction was in the United States.

(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) of this section if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

(c) Fulfillment of requirements of subsection (a)

Upon application by any alien who is found by the Attorney General to meet the requirements of subsection (a) of this section the Attorney General may in his discretion suspend deportation of such alien.

(d) Record of cancellation of deportation

Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made.

(e) Voluntary departure

(1) Except as provided in paragraph (2), the Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (2), (3), or (4) of section 1251(a) of this title (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

(2) The authority contained in paragraph (1) shall not apply to any alien who is deportable because of a conviction for an aggravated felony.

(f) Alien crewmen; nonimmigrant exchange aliens admitted to receive graduate medical education or training; other

The provisions of subsection (a) of this section shall not apply to an alien who—

(1) entered the United States as a crewman subsequent to June 30, 1964;

(2) 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; or

(3)(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.

(g) Consideration of evidence

In acting on applications under subsection (a)(3) of this section, 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub. L. 87–885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89–236, § 12, 79 Stat. 918; Oct. 20, 1976, Pub. L. 94–571, § 7(f), 90 Stat. 2706; Oct. 30, 1978, Pub. L. 95–549, title I, § 105, 92 Stat. 2066; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(d), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97–116, §§ 9, 18(h)(2), (j), 95 Stat. 1616, 1620; Nov. 6, 1986, Pub. L. 99–603, title III, § 315(b), 100 Stat. 3439; Oct. 24, 1988, Pub. L. 100–525, § 2(q)(1), 102 Stat. 2613; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7343(b), 102 Stat. 4470; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(e)(2), title VI, § 603(b)(3), (4), 104 Stat. 5011, 5085; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(m)(1), 105 Stat. 1757; Sept. 13, 1994, Pub. L. 103–322, title IV, § 40703, 108 Stat. 1955.)

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–322, § 40703(a), added par. (3).

Subsec. (g). Pub. L. 103–322, §40703(b), added subsec. (g).

1991—Subsec. (e)(1). Pub. L. 102–232 made technical correction to directory language of Pub. L. 101–649, §603(b)(4)(B). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–649, §603(b)(3), substituted ''1251(a)(4)(D) of this title'' for ''1251(a)(19) of this title''.

Subsec. (a)(2). Pub. L. 101–649, §603(b)(4)(A), substituted ''paragraph (2), (3), or (4)'' for ''paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18)''.

Subsec. (d). Pub. L. 101–649, §162(e)(2), struck out before period at end '', and unless the alien is an immediate relative within the meaning of section 1151(b) of this title, the Secretary of State shall reduce by one the number of immigrant visas authorized to be issued under section 1151(a) or 1152(a) of this title for the fiscal year then current''.

Subsec. (e)(1). Pub. L. 101–649, §603(b)(4)(B), as amended by Pub. L. 102–232, substituted ''(2), (3), or (4)'' for ''(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

1988—Subsecs. (b), (c). Pub. L. 100–525 amended Pub. L. 99–603. See 1986 Amendment notes below.

Subsec. (e). Pub. L. 100–690 redesignated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

1986—Subsec. (b). Pub. L. 99–603, §315(b)(1), formerly §315(b), as redesignated and amended by Pub. L. 100–525, §2(q)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99–603, §315(b)(2), as added by Pub. L. 100–525, §2(q)(1)(B), designated former par. (1) as entire subsec. (c) and struck out provision that if the deportation of any alien is suspended under the provisions of this subsection, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension, and that such reports shall be submitted on the first day of each calendar month in which Congress is in session, and struck out former pars. (2) and (3) which read as follows:

''(2) In the case of an alien specified in paragraph (1) of subsection (a) of this section—

if during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien or authorize the alien's voluntary departure at his own expense under the order of deportation in the manner provided by law. If, within the time above specified, neither the Senate nor the House of Representatives shall pass such a resolution, the Attorney General shall cancel deportation proceedings.

''(3) In the case of an alien specified in paragraph (2) of subsection (a) of this section—

if during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel deportation proceedings. If within the time above specified the Congress does not pass such a concurrent resolution, or if either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of the deportation of such alien, the Attorney General shall thereupon deport such alien in the manner provided by law.''

1981—Subsec. (a). Pub. L. 97–116, §18(h)(2), inserted ''(other than an alien described in section 1251(a)(19) of this title)'' after ''case of an alien'' in provision preceding par. (1).

Subsec. (d). Pub. L. 97–116, §18(j), substituted ''immigrant visas'' for ''nonpreference immigrant visas'', and ''section 1151(a) or 1152(a) of this title'' for ''section 1153(a)(7) of this title''.

Subsec. (f). Pub. L. 97–116, §9, permitted certain exchange aliens not subject to a requirement of returning to their home countries, or who have satisfied the requirement or had it waived, to apply for suspension of deportation, prohibited foreign medical graduates who have entered the United States as exchange aliens eligibility for application under this section notwithstanding a waiver of the two-year residence requirement, and eliminated the restriction on suspension of deportation in the case of natives of contiguous countries and adjacent islands for which nonquota visas are otherwise available.

1980—Subsec. (d). Pub. L. 96–212 substituted ''1153(a)(7)'' for ''1153(a)(8)''.

1978—Subsec. (e). Pub. L. 95–549 included reference to par. (19) of section 1251(a) of this title.

1976—Subsec. (d). Pub. L. 94–571 struck out ''is entitled to special immigrant classification under section 1101(a)(27)(A) of this title, or'' after ''unless the alien''.

1965—Subsec. (d). Pub. L. 89–236, §12(a), removed all references to quotas and provided that in each case where an alien, other than a special immigrant or an immediate relative, has his deportation suspended, a number is deducted from the nonpreference immigrant visas authorized for the current fiscal year.

Subsec. (f). Pub. L. 89–236, §12(b), inserted ''subsequent to June 30, 1964'' after ''entered the United States as a crewman''.

1962—Subsec. (a). Pub. L. 87–885 inserted ''applies to the Attorney General for suspension of deportation and'' in introductory paragraph; substituted ''except the provisions specified in paragraph (2) of this subsection'' and ''extreme hardship'' for ''and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended'' and ''exceptional and extremely unusual hardship'', respectively, and deleted ''applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952'' before ''is deportable under any law'', in par. (1); redesignated former par. (5) as (2), struck out from former provisions ''for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after June 27, 1962, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted'' after ''section 1251(a) of this title'' and ''has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation'' after ''good moral character''; and struck out former pars. (2) to (4), which authorized the Attorney General to suspend deportation and adjust status for permanent residence of aliens deportable for act committed or status existing prior to or at time of entry into the United States, deportable for act committed or status acquired subsequent to entry, and deportable for being a criminal, prostitute, or other immoral person, subversive, violator of narcotic laws, and similar class of persons, and person who entered without inspection, at time and place other than designated by the Attorney General, or without proper documents, respectively.

Subsec. (b). Pub. L. 87–885 substituted provisions declaring the requirement of continuous physical presence in the United States inapplicable to aliens who served honorably in the Armed Forces of the United States and were in the United States at the time of entry into service for provisions respecting the fulfillment of requirements of pars. (1) to (3) of former subsec. (a) and the making of reports to Congress, now incorporated in subsecs. (c)(1), (2) and (f) of this section.

Subsec. (c)(1). Pub. L. 87–885 incorporated first three sentences of former subsecs. (b) and (c) in par. (1), striking out from former subsec. (b) ''paragraphs (1),

(2), or (3)'' and from former subsec. (c) ''paragraph (4) or (5)'' before ''of subsection (a) of this section'' in first sentence, and from such former subsecs. (b) and (c) the requirement respecting the submission of reports on the fifteenth day of each calendar month in third sentence.

Subsec. (c)(2). Pub. L. 87–885 incorporated fourth and fifth sentences of former subsec. (b) in par. (2), prefacing provisions with introductory phrase reading ''In the case of an alien specified in paragraph (1) of subsection (a) of this section.''

Subsec. (c)(3). Pub. L. 87–885 incorporated fourth and fifth sentences of former subsec. (c) in par. (3), prefacing provisions with introductory phrase reading ''In the case of an alien specified in paragraph (2) of subsection (a) of this section.''

Subsec. (d). Pub. L. 87–885 struck out ''area'' after ''reduce by one the quota of the quota''.

Subsec. (e). Pub. L. 87–885 substituted ''paragraph (2) of subsection (a)'' for ''paragraph (4) or (5) of subsection (a).''

Subsec. (f). Pub. L. 87–885 added subsec. (f) which incorporated the last sentence of former subsec. (b) reading ''The provisions of this subsection relating to the granting of suspension of deportation shall not be applicable to any alien who is a native of any country contiguous to the United States or of any adjacent island, unless he establishes to the satisfaction of the Attorney General that he is ineligible to obtain a nonquota immigrant visa.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 162(e)(2) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 603(b)(3) and (4) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 7343(b) of Pub. L. 100–690 applicable to any alien who has been convicted, on or after Nov. 18, 1988, of an aggravated felony, see section 7343(c) of Pub. L. 100–690, set out as a note under section 1252 of this title.

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 315(e) of Pub. L. 99–603, as added by Pub. L. 100–525, § 2(q)(2), Oct. 24, 1988, 100 Stat. 2614, provided that: ''The amendment made by subsection (b)(1) [amending this section] shall apply to applications submitted under section 244 of the Immigration and Nationality Act [this section] before, on, or after the date of the enactment of this Act [Nov. 6, 1986]; but shall not apply to aliens removed from the United States before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–212 effective Apr. 1, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

CROSS REFERENCES

Definition of the term—
- Adjacent islands, see section 1101(b)(5) of this title.
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.
- Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigrant visa, see section 1101(a)(16) of this title.
- Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.
- Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.
- Person of good moral character, see section 1101(f) of this title.
- Special immigrant, see section 1101(a)(27) of this title.
- Spouse, see section 1101(a)(35) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1252b, 1254a of this title; title 18 section 4113.

§ 1254a. Temporary protected status

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not deport the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an ''employment authorized'' endorsement or other appropriate work permit.

(2) Duration of work authorization

Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) Notice

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a deportation proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b) of this section,

the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b) of this section, an alien (who is a national of such state) is in a deportation proceeding under this subchapter, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) of this section has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by pub-

lishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3) of this section, but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) Information concerning protected status at time of designations

At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) Review

(A) Designations

There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) Application to individuals

The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in deportation proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) Registration fee

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an ''employment authorized'' endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1253(h)(2) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3) of this section,

the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B) of this section, such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to suspension of deportation

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1254(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of

three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) of this section and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3) of this section.

(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

(June 27, 1952, ch. 477, title II, ch. 5, § 244A, as added and amended Nov. 29, 1990, Pub. L. 101–649, title III, § 302(a), title VI, § 603(a)(24), 104 Stat. 5030, 5084; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 304(b), 307(*l*)(5), 105 Stat. 1749, 1756; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(j), (z)(2), 108 Stat. 4317, 4318.)

AMENDMENTS

1994—Subsec. (c)(1)(B). Pub. L. 103–416, § 219(z)(2), made technical correction to directory language of Pub. L. 102–232, § 304(b)(2). See 1991 Amendment note below.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 103–416, § 219(j), substituted ''paragraphs'' for ''Paragraphs'' and ''and (3)(E)'' for ''or (3)(E)''.

1991—Subsec. (a)(1). Pub. L. 102–232, § 304(b)(1), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(A). Pub. L. 102–232, § 304(b)(3), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(B). Pub. L. 102–232, § 304(b)(2), as amended by Pub. L. 103–416, § 219(z)(2), inserted provisions requiring separate fee of aliens registered pursuant to designation made after July 17, 1991, and directing that all fees be credited to appropriation to be used to carry out this section.

Subsec. (c)(2)(A)(iii)(I). Pub. L. 102–232, § 307(*l*)(5)(A), substituted ''paragraphs (2)(A) and (2)(B)'' for ''paragraphs (9) and (10)''.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 102–232, § 307(*l*)(5)(B), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''paragraphs (3) (relating to security and related grounds).''

1990—Subsec. (c)(2)(A)(i). Pub. L. 101–649, § 603(a)(24)(A), which directed the substitution of ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)'', was executed by making the substitution for ''(14), (15), (20), (21), (25), and (32)'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(I). Pub. L. 101–649, § 603(a)(24)(B), which directed the substitution of ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101–649, § 603(a)(24)(C), substituted ''(2)(C)'' for ''(23)'' and inserted ''or'' at end.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 101–649, § 603(a)(24)(D), which directed the substitution of ''(3) (relating to security and related grounds)'' for ''(27) and (29) (relating to national security)'', and a period for ''; or'', was executed by substituting ''(3) (relating to security and related grounds)'' for ''(27) and (29) of such section (relating to national security)'', and a period for '', or'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(IV). Pub. L. 101–649, § 603(a)(24)(E), struck out subcl. (IV) which referred to par. (33).

EFFECTIVE DATE OF 1994 AMENDMENT

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

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(2) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 304(b) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(24) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

ALIENS AUTHORIZED TO TRAVEL ABROAD TEMPORARILY

Section 304(c) of Pub. L. 102–232 provided that:

''(1) In the case of an alien described in paragraph (2) whom the Attorney General authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization—

''(A) the alien shall be inspected and admitted in the same immigration status the alien had at the time of departure if—

''(i) in the case of an alien described in paragraph (2)(A), the alien is found not to be excludable on a ground of exclusion referred to in section 301(a)(1)

of the Immigration Act of 1990 [Pub. L. 101–649, set out as a note under section 1255a of this title], or

''(ii) in the case of an alien described in paragraph (2)(B), the alien is found not to be excludable on a ground of exclusion referred to in section 244A(c)(2)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1254a(c)(2)(A)(iii)]; and

''(B) the alien shall not be considered, by reason of such authorized departure, to have failed to maintain continuous physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act if the absence meets the requirements of section 244(b)(2) of such Act.

''(2) Aliens described in this paragraph are the following:

''(A) Aliens provided benefits under section 301 of the Immigration Act of 1990 (relating to family unity).

''(B) Aliens provided temporary protected status under section 244A of the Immigration and Nationality Act, including aliens provided such status under section 303 of the Immigration Act of 1990 [Pub. L. 101–649, set out below].''

EFFECT ON EXECUTIVE ORDER 12711

Section 302(c) of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 304(a), Dec. 12, 1991, 105 Stat. 1749; Pub. L. 103–416, title II, § 219(y), Oct. 25, 1994, 108 Stat. 4318, provided that: ''Notwithstanding subsection (g) of section 244A of the Immigration and Nationality Act [8 U.S.C. 1254a(g)] (inserted by the amendment made by subsection (a)), such section shall not supersede or affect Executive Order 12711 (April 11, 1990 [8 U.S.C. 1101 note], relating to policy implementation with respect to nationals of the People's Republic of China).''

SPECIAL TEMPORARY PROTECTED STATUS FOR SALVADORANS

Section 303 of Pub. L. 101–649, as amended by Pub. L. 102–65, § 1, July 2, 1991, 105 Stat. 322, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—El Salvador is hereby designated under section 244A(b) of the Immigration and Nationality Act [8 U.S.C. 1254a(b)], subject to the provisions of this section.

''(2) PERIOD OF DESIGNATION.—Such designation shall take effect on the date of the enactment of this section [Nov. 29, 1990] and shall remain in effect until the end of the 18-month period beginning January 1, 1991.

''(b) ALIENS ELIGIBLE.—

''(1) IN GENERAL.—In applying section 244A of the Immigration and Nationality Act [8 U.S.C. 1254a] pursuant to the designation under this section, subject to section 244A(c)(3) of such Act, an alien who is a national of El Salvador meets the requirements of section 244A(c)(1) of such Act only if—

''(A) the alien has been continuously physically present in the United States since September 19, 1990;

''(B) the alien is admissible as an immigrant, except as otherwise provided under section 244A(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244A(c)(2)(B) of such Act; and

''(C) in a manner which the Attorney General shall establish, the alien registers for temporary protected status under this section during the registration period beginning January 1, 1991, and ending October 31, 1991.

''(2) REGISTRATION FEE.—The Attorney General shall require payment of a reasonable fee as a condition of registering an alien under paragraph (1)(C) (including providing an alien with an 'employment authorized' endorsement or other appropriate work permit under this section). The amount of the fee shall be sufficient to cover the costs of administration of this section. Notwithstanding section 3302 of title 31, United States Code, all such registration fees collected shall be credited to the appropriation to be used in carrying out this section.

''(c) APPLICATION OF CERTAIN PROVISIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, the provisions of section 244A of the Immigration and Nationality Act [8 U.S.C. 1254a] (including subsection (h) thereof) shall apply to El Salvador (and aliens provided temporary protected status) under this section in the same manner as they apply to a foreign state designated (and aliens provided temporary protected status) under such section.

''(2) PROVISIONS NOT APPLICABLE.—Subsections (b)(1), (b)(2), (b)(3), (c)(1), (c)(4), (d)(3), and (i) of such section 244A shall not apply under this section.

''(3) 6-MONTH PERIOD OF REGISTRATION AND WORK AUTHORIZATION.—Notwithstanding section 244A(a)(2) of the Immigration and Nationality Act, the work authorization provided under this section shall be effective for periods of 6 months. In applying section 244A(c)(3)(C) of such Act under this section, 'semiannually, at the end of each 6-month period' shall be substituted for 'annually, at the end of each 12-month period' and, notwithstanding section 244A(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.

''(4) REENTRY PERMITTED AFTER DEPARTURE FOR EMERGENCY CIRCUMSTANCES.—In applying section 244A(f)(3) of the Immigration and Nationality Act under this section, the Attorney General shall provide for advance parole in the case of an alien provided special temporary protected status under this section if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to depart for a brief, temporary trip abroad.

''(d) ENFORCEMENT OF REQUIREMENT TO DEPART AT TIME OF TERMINATION OF DESIGNATION.—

''(1) SHOW CAUSE ORDER AT TIME OF FINAL REGISTRATION.—At the registration occurring under this section closest to the date of termination of the designation of El Salvador under subsection (a), the Immigration and Naturalization Service shall serve on the alien granted temporary protected status an order to show cause that establishes a date for deportation proceedings which is after the date of such termination of designation. If El Salvador is subsequently designated under section 244A(b) of the Immigration and Nationality Act [8 U.S.C. 1254a], the Service shall cancel such orders.

''(2) SANCTION FOR FAILURE TO APPEAR.—If an alien is provided an order to show cause under paragraph (1) and fails to appear at such proceedings, except for exceptional circumstances, the alien may be deported in absentia under section 242B of the Immigration and Nationality Act [8 U.S.C. 1252b] (inserted by section 545(a) of this Act) and certain discretionary forms of relief are no longer available to the alien pursuant to such section.''

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a) of this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title; or (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title (relating to an alien fiancee or fiance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings; bona fide marriage exception

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a) of this section.

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) or 1184(d) of this title with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States.

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

(1) such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), and (7)(A) of section 1182(a) of this title shall not apply, and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i)[1] Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States who—

(A) entered the United States without inspection; or

(B) is within one of the classes enumerated in subsection (c) of this section,

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling five times the fee required for the processing of applications under this section as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

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

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

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3) Sums remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in sections 1356(m), (n), and (*o*) of this title.

(i)[1] Adjustment to permanent resident status

(1) If, in the opinion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(i) of this title has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(2) If, in the sole discretion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(ii) of this title has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to—

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 2708(a) of title 22,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(3) Upon the approval of adjustment of status under paragraphs[2] (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 1151(d) and 1153(b)(4) of this title for the fiscal year then current.

(June 27, 1952, ch. 477, title II, ch. 5, § 245, 66 Stat. 217; Aug. 21, 1958, Pub. L. 85–700, § 1, 72 Stat. 699; July 14, 1960, Pub. L. 86–648, § 10, 74 Stat. 505; Oct. 3, 1965, Pub. L. 89–236, § 13, 79 Stat. 918; Oct. 20, 1976, Pub. L. 94–571, § 6, 90 Stat. 2705; Dec. 29, 1981, Pub. L. 97–116, § 5(d)(2), 95 Stat. 1614; Nov. 6, 1986, Pub. L. 99–603, title I, § 117, title III, § 313(c), 100 Stat. 3384, 3438; Nov. 10, 1986, Pub. L. 99–639, §§ 2(e), 3(b), 5(a), 100 Stat. 3542, 3543; Oct. 24, 1988, Pub. L. 100–525, §§ 2(f)(1), (p)(3), 7(b), 102 Stat. 2611, 2613, 2616; Nov. 29, 1990, Pub. L. 101–649, title I, §§ 121(b)(4), 162(e)(3), title VII, § 702(a), 104 Stat. 5011, 5086; Oct. 1, 1991, Pub. L. 102–110, § 2(c), 105 Stat. 556; Dec. 12, 1991, Pub. L. 102–232, title III, §§ 302(d)(2), (e)(7), 308(a), 105 Stat. 1744, 1746, 1757; Aug. 26, 1994, Pub. L. 103–317, title V, § 506(b), 108 Stat. 1765; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(c), 108 Stat. 2025; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(k), 108 Stat. 4317.)

AMENDMENT OF SECTION

For termination of amendment by section 506(c) of Pub. L. 103–317, see Effective and Termination Dates of 1994 Amendments note below.

REFERENCES IN TEXT

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (i)(1), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of this title.

Section 301 of the Immigration Act of 1990, referred to in subsec. (i)(1)(iii), is section 301 of Pub. L. 101–649,

[1] So in original. Two subsecs. (i) have been enacted.

[2] So in original. Probably should be "paragraph".

which is set out as a note under section 1255a of this title.

AMENDMENTS

1994—Subsec. (c)(5). Pub. L. 103–322, § 130003(c)(2), added cl. (5).

Subsec. (h)(2)(B). Pub. L. 103–416 substituted ''and (3)(E)'' for ''or (3)(E)''.

Subsec. (i). Pub. L. 103–322, § 130003(c)(1), added subsec. (i) relating to adjustment to permanent resident status.

Pub. L. 103–317, § 506(b), (c), temporarily added subsec. (i) relating to adjustment in status of certain aliens physically present in United States. See Effective and Termination Dates of 1994 Amendments note below.

1991—Subsec. (b). Pub. L. 102–232, § 302(e)(7), substituted ''sections 1152 and 1153'' for ''sections 1151(a)'' and ''for the fiscal year then current'' for ''for the succeeding fiscal year''.

Subsec. (c)(2). Pub. L. 102–232, § 302(d)(2)(A), inserted ''(J),'' after ''(I),''.

Pub. L. 102–110, § 2(c)(1), substituted '', (I), or (K)'' for ''or (I)''.

Subsec. (e)(3). Pub. L. 102–232, § 308(a), substituted ''section 1154(g)'' for ''section 1154(h)''.

Subsec. (g). Pub. L. 102–110, § 2(c)(2), added subsec. (g).

Subsec. (h). Pub. L. 102–232, § 302(d)(2)(B), added subsec. (h).

1990—Subsec. (b). Pub. L. 101–649, § 162(e)(3), struck out ''or nonpreference'' after ''number of the preference'' and substituted ''1151(a)'' for ''1152(e) or 1153(a)'' and ''succeeding fiscal year'' for ''fiscal year then current''.

Subsec. (e)(1). Pub. L. 101–649, § 702(a)(1), substituted ''Except as provided in paragraph (3), an alien'' for ''An alien''.

Subsec. (e)(3). Pub. L. 101–649, § 702(a)(2), added par. (3).

Subsec. (f). Pub. L. 101–649, § 121(b)(4), added subsec. (f).

1988—Subsec. (c)(2). Pub. L. 100–525, § 2(f)(1), substituted ''1101(a)(27)(H) or (I)'' for ''1101(a)(27)(H)'', inserted ''or'' after ''no fault of his own'', and substituted ''in unlawful'' for ''not in legal'' and ''lawful status'' for ''legal status''.

Subsec. (c)(4). Pub. L. 100–525, § 2(p)(3), made technical correction to Pub. L. 99–603, § 313(c). See 1986 Amendment note below.

Subsec. (d). Pub. L. 100–525, § 7(b), amended Pub. L. 99–639, § 3(b). See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–639, § 5(a)(1), substituted ''Subsection (a) of this section'' for ''The provisions of this section''.

Subsec. (c)(2). Pub. L. 99–603, § 117, inserted ''or who is not in legal immigration status on the date of filing the application for adjustment or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States''.

Subsec. (c)(4). Pub. L. 99–603, § 313(c), as amended by Pub. L. 100–525, § 2(p)(3), added cl. (4).

Subsec. (d). Pub. L. 99–639, § 3(b), as amended by Pub. L. 100–525, § 7(b), inserted ''The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title (relating to an alien fiancee or fiance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.''

Pub. L. 99–639, § 2(e), added subsec. (d).

Subsec. (e). Pub. L. 99–639, § 5(a)(2), added subsec. (e).

1981—Subsec. (c)(2). Pub. L. 97–116 inserted ''or a special immigrant described in section 1101(a)(27)(H) of this title'' after ''section 1151(b) of this title''.

1976—Subsec. (a). Pub. L. 94–571 struck out '', other than alien crewman,'' after ''status of an alien'' and substituted ''filed'' for ''approved''.

Subsec. (b). Pub. L. 94–571 inserted reference to section 1152(e) of this title and struck out comma after ''chargeable''.

Subsec. (c). Pub. L. 94–571 substituted provision making the section inapplicable to alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa for provision making the section inapplicable to natives of contiguous country or adjacent island.

1965—Subsec. (b). Pub. L. 89–236, § 13(a), struck out reference to quota area to which the alien is chargeable under section 1152 of this title and substituted reference to number of preference or nonpreference visas authorized to be issued under section 1153(a) of this title within the class to which the alien is chargeable.

Subsec. (c). Pub. L. 89–236, § 13(b), substituted ''any country of the Western Hemisphere'' for ''any country contiguous to the United States''.

1960—Subsec. (a). Pub. L. 86–648 substituted ''alien, other than an alien crewman, who was inspected and admitted or paroled into the United States'' for ''alien who was admitted to the United States as a bona fide nonimmigrant'', struck out former cl. (3) which read ''an immigrant visa was immediately available to him at the time of his application'', redesignated cl. (4) as (3), and struck out concluding sentence which read as follows: ''A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list.''

1958—Pub. L. 85–700 among other changes, substituted provisions allowing adjustment of status of alien who was admitted as a bona fide nonimmigrant to that of an alien lawfully admitted for permanent residence, for provisions allowing adjustment of status of alien who was lawfully admitted as a bona fide nonimmigrant and continued to maintain that status, to that of a permanent resident either as a quota immigrant or as a nonquota immigrant claiming nonquota status as the spouse or child of a citizen under certain specified conditions, by striking out provision terminating nonimmigrant quota status of alien who files application for adjustment of status, and by adding subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENTS

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

Subsec. (i) of this section, relating to adjustment in status of certain aliens physically present in United States, effective Oct. 1, 1994, and ceases to have effect Oct. 1, 1997, see section 506(c) of Pub. L. 103–317, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1991 AMENDMENTS

Amendment by section 302(d)(2), (e)(7) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 308(a) of Pub. L. 102–232 provided that the amendment made by that section is effective Oct. 1, 1991.

Amendment by Pub. L. 102–110 effective 60 days after Oct. 1, 1991, see section 2(d) of Pub. L. 102–110, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 121(b)(4), 162(e)(3) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 702(a) of Pub. L. 101–649 applicable to marriages entered into before, on, or after Nov. 29, 1990, see section 702(c) of Pub. L. 101–649, set out as a note under section 1154 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(f)(2) of Pub. L. 100–525 provided that: ''The amendments made by paragraph (1) [amending this section] and by section 117 of IRCA [section 117 of Pub. L. 99–603, amending this section] shall apply to applications for adjustment of status filed on or after November 6, 1986.''

Amendment by section 2(f)(1), (p)(3) of Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

Amendment by section 7(b) of Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 3(d)(2) of Pub. L. 99–639 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to adjustments occurring on or after the date of the enactment of this Act [Nov. 10, 1986].''

Amendment by section 5(a) of Pub. L. 99–639 applicable to marriages entered into on or after Nov. 10, 1986, see section 5(c) of Pub. L. 99–639, set out as a note under section 1154 of this title.

Amendment by section 117 of Pub. L. 99–603 applicable to applications for adjustment of status filed on or after Nov. 6, 1986, see section 2(f)(2) of Pub. L. 100–525, set out as an Effective Date of 1988 Amendment note above.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

FINGERPRINT CHECKS

Section 506(d) of Pub. L. 103–317 provided that: ''The Immigration and Naturalization Service shall conduct full fingerprint identification checks through the Federal Bureau of Investigation for all individuals over sixteen years of age adjusting immigration status in the United States pursuant to this section [amending this section and section 1182 of this title and enacting provisions set out as a note under section 1182 of this title].''

ADJUSTMENT OF STATUS OF CERTAIN NATIONALS OF PEOPLE'S REPUBLIC OF CHINA

Pub. L. 102–404, Oct. 9, 1992, 106 Stat. 1969, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Chinese Student Protection Act of 1992'.

''SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

''(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

''(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act [8 U.S.C. 1154(a)] for classification under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)].

''(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

''(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

''(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act [8 U.S.C. 1182(a), (e)] shall not apply; and

''(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

''(4) The numerical level of section 202(a)(2) of such Act [8 U.S.C. 1152(a)(2)] shall not apply.

''(5) Section 245(c) of such Act [8 U.S.C. 1255(c)] shall not apply.

''(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

''(1) is a national of the People's Republic of China described in section 1 of Executive Order No. 12711 [8 U.S.C. 1101 note] as in effect on April 11, 1990;

''(2) has resided continuously in the United States since April 11, 1990 (other than brief, casual, and innocent absences); and

''(3) was not physically present in the People's Republic of China for longer than 90 days after such date and before the date of the enactment of this Act [Oct. 9, 1992].

''(c) CONDITION; DISSEMINATION OF INFORMATION.—

''(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the President has determined and certified to Congress, before the first day of the application period, that conditions in the People's Republic of China permit aliens described in subsection (b)(1) to return to that foreign state in safety.

''(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period, the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b)(1) information respecting the benefits available under this section. To the extent practicable, the Attorney General shall provide notice of these benefits to the last known mailing address of each such alien.

''(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

''(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1152(a)(2)] applicable to natives of the People's Republic of China in each applicable fiscal year (as defined in paragraph (3)) shall be reduced by 1,000.

''(2) ALLOTMENT IF SECTION 202(e) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

''(A) 300 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)] in that year, and

''(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

''(3) APPLICABLE FISCAL YEAR.—

''(A) IN GENERAL.—In this subsection, the term 'applicable fiscal year' means each fiscal year during the period—

''(i) beginning with the fiscal year in which the application period begins; and

''(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph (B) equals or exceeds the total number of aliens whose

status has been adjusted under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] pursuant to subsection (a).

''(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.

''(e) APPLICATION PERIOD DEFINED.—In this section, the term 'application period' means the 12-month period beginning July 1, 1993.''

ADJUSTMENT OF STATUS FOR CERTAIN H–1 NONIMMIGRANT NURSES

Pub. L. 101–238, § 2, Dec. 18, 1989, 103 Stat. 2099, as amended by Pub. L. 101–649, title I, § 162(f)(1), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102–232, title III, §§ 302(e)(10), 307(*l*)(10), Dec. 12, 1991, 105 Stat. 1746, 1757, provided that:

''(a) IN GENERAL.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to the adjustment of status under section 245 of such Act [8 U.S.C. 1255] of an immigrant, and the immigrant's accompanying spouse and children—

''(1) who, as of September 1, 1989, has the status of a nonimmigrant under paragraph (15)(H)(i) of section 101(a) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse,

''(2) who, for at least 3 years before the date of application for adjustment of status (whether or not before, on, or after, the date of the enactment of this Act [Dec. 18, 1989]), has been employed as a registered nurse in the United States, and

''(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(5)(A) of such Act [8 U.S.C. 1182(a)(5)(A)].

The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

''(b) TRANSITION.—For purposes of adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] in the case of an alien who, as of September 1, 1989, is present in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse, who, as of September 1, 1989, is present in the United States and had been admitted to the United States in the status of nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse but has failed to maintain that status due to the expiration of the time limitation with respect to such status, or who is the spouse or child of such an alien, unauthorized employment performed before the date of the enactment of the Immigration Act of 1990 [Nov. 29, 1990] shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and such an alien shall be considered as having continued to maintain lawful status throughout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 162(f)(1) of the Immigration Act of 1990 [Pub. L. 101–649, amending this note].

''(c) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—The definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

''(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).''

[Section 302(e)(10) of Pub. L. 102–232 provided that the amendment made by that section to section 2(b) of Pub. L. 101–238, set out above, is effective as if included in the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.]

[Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section to section 2(a)(3) of Pub. L. 101–238, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

ADJUSTMENT OF STATUS FOR CERTAIN SOVIET AND INDOCHINESE PAROLEES

Pub. L. 101–167, title V, § 599E, Nov. 21, 1989, 103 Stat. 1263, as amended by Pub. L. 101–513, title V, § 598(b), Nov. 5, 1990, 104 Stat. 2063; Pub. L. 101–649, title VI, § 603(a)(22), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 102–232, title III, § 307(*l*)(9), Dec. 12, 1991, 105 Stat. 1757; Pub. L. 102–391, title V, § 582(a)(2), (b)(2), Oct. 6, 1992, 106 Stat. 1686; Pub. L. 102–511, title IX, § 905(b)(2), Oct. 24, 1992, 106 Stat. 3356; Pub. L. 103–236, title V, § 512(2), Apr. 30, 1994, 108 Stat. 466; Pub. L. 103–416, title II, § 219(bb), Oct. 25, 1994, 108 Stat. 4319, provided that:

''(a) IN GENERAL.—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

''(1) applies for such adjustment,

''(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed,

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c), and

''(4) pays a fee (determined by the Attorney General) for the processing of such application.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided in subsection (a) shall only apply to an alien who—

''(1) was a national of an independent state of the former Soviet Union, Estonia, Latvia, Lithuania, Vietnam, Laos, or Cambodia, and

''(2) was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1996, after being denied refugee status.

''(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A)] shall not apply to adjustment of status under this section and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

''(d) DATE OF APPROVAL.—Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(2).

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].''

[Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section to section 599E of Pub. L. 101–167, set out above, is effective as if included

in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

ADJUSTMENT OF STATUS OF NONIMMIGRANT ALIENS RESIDING IN THE VIRGIN ISLANDS TO PERMANENT RESIDENT ALIEN STATUS

Pub. L. 97–271, Sept. 30, 1982, 96 Stat. 1157, as amended by Pub. L. 101–649, title I, § 162(e)(6), Nov. 29, 1990, 104 Stat. 5011, provided that:

''SHORT TITLE AND FINDINGS

''SECTION 1. (a) This Act may be cited as the 'Virgin Islands Nonimmigrant Alien Adjustment Act of 1982'.

''(b) Congress finds—

''(1) that in order to eliminate the uncertainty and insecurity of aliens who—

''(A) legally entered the Virgin Islands of the United States as nonimmigrants for employment under the temporary alien labor program,

''(B) have continued to reside in the Virgin Islands for long periods (some for as long as twenty years), and

''(C) have contributed to the economic, social, and cultural development of the Virgin Islands and have become an integral part of the society of the Virgin Islands,

it is necessary and equitable to provide for the orderly adjustment of their immigration status to that of permanent resident aliens; and

''(2) because—

''(A) the Congress has special responsibility and authority with respect to the territories and the establishment of immigration policy, and

''(B)(i) the Virgin Islands is a small and densely populated insular territory with limited resources,

''(ii) most of the aliens eligible for benefits under section 2 of this Act are natives of islands in the Caribbean and have relatives residing in such islands, and such relatives, if they were permitted to immigrate to the United States, are likely to settle in the Virgin Islands, and

''(iii) the admission of a significant number of these relatives would have a severe and detrimental impact on the limited health, education, housing, and other services available in the Virgin Islands,

there is a necessary and compelling need to prevent a secondary migration of a significant number of such relatives to the Virgin Islands.

''ADJUSTMENT OF IMMIGRATION STATUS

''SEC. 2. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

''(1) makes application for such adjustment during the one-year period beginning on the date of the enactment of this Act [Sept. 30, 1982],

''(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except for the grounds of exclusion specified in paragraphs (14), (20), (21), (25), and (32), of section 212(a) of the Immigration and Nationality Act [section 1182(a)(14), (20), (21), (25), and (32) of this title] (hereinafter in this Act referred to as 'the Act'), and

''(3) is physically present in the Virgin Islands of the United States at the time of filing such application for adjustment.

If such an alien has filed such an application and is or becomes deportable for failure to maintain nonimmigrant status, the Attorney General shall defer the deportation of the alien until final action is taken on the alien's application for adjustment.

''(b) The benefits provided by subsection (a) apply to any alien who—

''(1) was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker under section 101(a)(15)(H)(ii) of the Act [section 1101(a)(15)(H)(ii) of this title] or as a spouse or minor child of such worker, and

''(2) has resided continuously in the Virgin Islands of the United States since June 30, 1975.

''(c)(1) The numerical limitations described in sections 201(a) and 202 of the Act [sections 1151(a) and 1152 of this title] shall not apply to an alien's adjustment of status under this section. Such adjustment of status shall not result in any reduction in the number of aliens who may acquire the status of an alien lawfully admitted to the United States for permanent residence under the Act [this chapter].

''(2) The Secretary of State, in his discretion and after consultation with the Secretary of the Interior and the Governor of the Virgin Islands of the United States, may limit the number of immigrant visas that may be issued in any fiscal year to aliens with respect to whom second preference petitions (filed by aliens who have had their status so adjusted) are approved.

''(3) Notwithstanding any other provision of law, no alien shall be eligible to receive an immigrant visa (or to otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence)—

''(A) by virtue of a fourth or fifth preference petition filed by an individual who had his status adjusted under this section unless the individual establishes to the satisfaction of the Attorney General that exceptional and extremely unusual hardship exists for permitting the alien to receive such visa (or otherwise acquire such status); or

''(B) by virtue of a second preference petition filed by an individual who was admitted to the United States as an immigrant by virtue of an immediate relative petition filed by the son or daughter of the individual, if that son or daughter had his or her status adjusted under this section.

''(4) For purposes of this subsection, the terms 'second preference petition', 'fourth preference petition', 'fifth preference petition', and 'immediate relative petition' mean, in the case of an alien, a petition filed under section 204(a) of the Act [section 1154(a) of this title] to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 203(a)(4), 203(a)(5), or 201(b), respectively, of the Act [section 1153(a)(2), (4), (5), or 1151(b) of this title] (as in effect before October 1, 1991) or by reason of the relationship described in section 203(a)(2), 203(a)(3), or 203(a)(4), or 201(b)(2)(A)(i), respectively, of such Act (as in effect on or after such date).

''(d) Except as otherwise specifically provided in this section, the definitions contained in the Act [this chapter] shall apply in the administration of this section. Nothing contained in this Act [this chapter] shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Act [this chapter] or any other law relating to immigration, nationality, and naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude him from seeking such status under any other provision of law for which he may be eligible.

''TERMINATION OF TEMPORARY WORKER PROGRAM IN THE VIRGIN ISLANDS

''SEC. 3. Notwithstanding any other provision of law, on and after the date of the enactment of this Act [Sept. 30, 1982] the Attorney General shall not approve any petition filed under section 214(c) of the Act [section 1184(c) of this title] in the case of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii) of such Act [section 1101(a)(15)(H)(ii) of this title] for employment in the Virgin Islands of the United States other than for employment as an entertainer or as an athlete and for a period not exceeding forty-five days.

''IMPACT ASSESSMENT AND REPORT

''SEC. 4. The Secretaries of Health and Human Services, Education, Housing and Urban Development,

Labor, and the Interior, and the Attorney General, in consultation with officials of the Government of the Virgin Islands of the United States and within such amounts as may otherwise be available through appropriations, shall jointly assess the impact on the Government of the Virgin Islands of providing health, education, housing, and other social services to individuals whose status is adjusted under section 2 of this Act (and to relatives of such individuals who enter the Virgin Islands as a result of such adjustment) and the need for assistance to the Government of the Virgin Islands to assist it in meeting the needs of these individuals and relatives. They shall, within one year after the date of the enactment of this Act [Sept. 30, 1982], report to the President and the Congress on the results of their assessment and on any recommendations for changes in legislation which may be appropriate.''

DEVELOPMENT OF ELIGIBILITY CRITERIA FOR ADMISSION OF REFUGEES FROM CAMBODIA

Pub. L. 95–624, § 16, Nov. 9, 1978, 92 Stat. 3465, provided that: ''The Attorney General, in consultation with the Congress, shall develop special eligibility criteria under the current United States parole program for Indochina Refugees which would enable a larger number of refugees from Cambodia to qualify for admission to the United States.''

INDOCHINA REFUGEES; ADJUSTMENT OF STATUS

Pub. L. 95–145, title I, §§ 101–107, Oct. 28, 1977, 91 Stat. 1223, as amended by Pub. L. 96–212, title II, § 203(i), Mar. 17, 1980, 94 Stat. 108, provided:

''SEC. 101. That (a) the status of any alien described in subsection (b) of this section may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if—

''(1) the alien makes an application for such adjustment within six years after the date of enactment of this title [Oct. 28, 1977];

''(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except for the grounds for exclusion specified in paragraph (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act [section 1182(a)(14), (15), (20), (21), (25), and (32) of this title]; and

''(3) the alien has been physically present in the United States for at least one year.

''(b) The benefits provided by subsection (a) shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia and who—

''(1) was paroled into the United States as a refugee from those countries under section 212(d)(5) of the Immigration and Nationality Act [section 1182(d)(5) of this title] subsequent to March 31, 1975, but prior to January 1, 1979; or

''(2) was inspected and admitted or paroled into the United States on or before March 31, 1975, and was physically present in the United States on March 31, 1975.

''SEC. 102. Upon approval of an application for adjustment of status under section 101 of this title [this note], the Attorney General shall establish a record of the alien's admission for permanent residence as of March 31, 1975, or the date of the alien's arrival in the United States, whichever date is later.

''SEC. 103. Any alien determined to be eligible for lawful admission for permanent residence under this title who acquired that status under the provisions of the Immigration and Nationality Act [this chapter] prior to the date of enactment of this title [Oct. 28, 1977] may, upon application, have his admission for permanent residence recorded as of March 31, 1975, or the date of his arrival in the United States, whichever date is later.

''SEC. 104. When an alien has been granted the status of having been lawfully admitted to the United States for permanent residence pursuant to this title [this note], his spouse and children, regardless of nationality, may also be granted such status by the Attorney General, in his discretion and under such regulations he may prescribe, if they meet the requirements specified in section 101(a) of this title. Upon approval of the application, the Attorney General shall create a record of the alien's admission for permanent residence as of the date of the record of admission of the alien through whom such spouse and children derive benefits under this section.

''SEC. 105. Any alien who ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion shall be ineligible for permanent residence under any provision of this title [this note].

''SEC. 106. When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to the provisions of this title [this note] the Secretary of State shall not be required to reduce the number of visas authorized to be issued under the Immigration and Nationality Act [this chapter], and the Attorney General shall not be required to charge the alien any fee.

''SEC. 107. Except as otherwise specifically provided in this title [this note], the definitions contained in the Immigration and Nationality Act [this chapter] shall apply in the administration of this title. Nothing contained in this title shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, and naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this title shall not preclude him from seeking such status under any other provision of law for which he may be eligible.''

Section 204(b)(1)(C) of Pub. L. 96–212 provided that the amendment of section 101(a)(3) of Pub. L. 95–145, set out above, by Pub. L. 96–212 is effective immediately before Apr. 1, 1980.

CUBAN REFUGEES: ADJUSTMENT OF STATUS

Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended by Pub. L. 94–571, § 8, Oct. 20, 1976, 90 Stat. 2706; Pub. L. 96–212, title II, § 203(i), Mar. 17, 1980, 94 Stat. 108, provided: ''That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act [subsec. (c) of this section], the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

''SEC. 2. In the case of any alien described in section 1 of this Act who prior to the effective date thereof [Nov. 2, 1966], has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act [Nov. 2, 1966], whichever date is later.

''SEC. 3. Section 13 of the Act entitled 'An Act to amend the Immigration and Nationality Act, and for other purposes', approved October 3, 1965 (Public Law 89–236) [amending subsecs. (b) and (c) of this section] is amended by adding at the end thereof the following new subsection:

''(c) Nothing contained in subsection (b) of this section [amending subsec. (c) of this section] shall be construed to affect the validity of any application for adjustment under section 245 [this section] filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act [Pub. L. 89–236] are, unless otherwise specifically provided therein, continued in force and effect.'

''SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act [section 1101(a), (b) of this title] shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.

''SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976 [see Effective Date of 1976 Amendment note above].''

Section 204(b)(1)(C) of Pub. L. 96–212 provided that the amendment of section 1 of Pub. L. 89–732, set out above, by Pub. L. 96–212 is effective immediately before Apr. 1, 1980.

CROSS REFERENCES

Definition of alien, Attorney General, immigrant visa, lawfully admitted for permanent residence, nonimmigrant alien, permanent, residence, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1160, 1251, 1252b, 1254a, 1255a, 1256 of this title.

§ 1255a. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

(a) Temporary resident status

The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application

(A) During application period

Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after November 6, 1986) designated by the Attorney General.

(B) Application within 30 days of show-cause order

An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 1252 of this title, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application

Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 1154(a) of this title.

(2) Continuous unlawful residence since 1982

(A) In general

The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants

In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) Exchange visitors

If the alien was at any time a nonimmigrant exchange alien (as defined in section 1101(a)(15)(J) of this title), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 1182(e) of this title or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since November 6, 1986

(A) In general

The alien must establish that the alien has been continuously physically present in the United States since November 6, 1986.

(B) Treatment of brief, casual, and innocent absences

An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant

The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section,

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 [8 U.S.C. 1522 note] shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) Subsequent adjustment to permanent residence and nature of temporary resident status

(1) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) of this section to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence

The alien must apply for such adjustment during the 2-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence

(i) In general

The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences

An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant

The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills

(i) In general

The alien must demonstrate that he either—

(I) meets the requirements of section 1423(a) of this title (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly or developmentally disabled individuals

The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

(iii) Relation to naturalization examination

In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 1423(a) of this title may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under subchapter III of this chapter.

(2) Termination of temporary residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a) of this section—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the 43rd first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under subsection (a) of this section—

(A) Authorization of travel abroad

The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) Authorization of employment

The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an ''employment authorized'' endorsement or other appropriate work permit.

(c) Applications for adjustment of status

(1) To whom may be made

The Attorney General shall provide that applications for adjustment of status under subsection (a) of this section may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term ''qualified designated entity'' means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications

For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89–732 [8 U.S.C. 1255 note], or Public Law 95–145 [8 U.S.C. 1255 note].

(3) Treatment of applications by designated entities

Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) Limitation on access to information

Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) Confidentiality of information

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6) or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986,

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications;

except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(6) Penalties for false statements in applications

Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Application fees

(A) Fee schedule

The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1) of this section. The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) of this section after the end of the first year of the 2-year period described in subsection (b)(1)(A) of this section.

(B) Use of fees

The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(C) Immigration-related unfair employment practices

Not to exceed $3,000,000 of the unobligated balances remaining in the account established in subparagraph (B) shall be available in fiscal year 1992 and each fiscal year thereafter for grants, contracts, and cooperative agreements to community-based organizations for outreach programs, to be administered by the Office of Special Counsel for Immigration-Related Unfair Employment Practices: *Provided*, That such amounts shall be in addition to any funds appropriated to the Office of Special Counsel for such purposes: *Provided further*, That none of the funds made available by this section shall be used by the Office of Special Counsel to establish regional offices.

(d) Waiver of numerical limitations and certain grounds for exclusion

(1) Numerical limitations do not apply

The numerical limitations of sections 1151 and 1152 of this title shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion

In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B) of this section—

(A) Grounds of exclusion not applicable

The provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

Except as provided in clause (ii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived

The following provisions of section 1182(a) of this title may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(III) Paragraph (3) (relating to security and related grounds).

(IV) Paragraph (4) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

Subclause (IV) (prohibiting the waiver of section 1182(a)(4) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(iii) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(4) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) Medical examination

The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) Temporary stay of deportation and work authorization for certain applicants

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) of this section and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) of this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit.

(2) During application period

The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) of this section during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit.

(f) Administrative and judicial review

(1) Administrative and judicial review

There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) No review for late filings

No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) Administrative review

(A) Single level of administrative appellate review

The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) Standard for review

Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) Judicial review

(A) Limitation to review of deportation

There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 1105a of this title.

(B) Standard for judicial review

Such judicial review shall be based solely upon the administrative record established

at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) Implementation of section

(1) Regulations

The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term ''resided continuously'', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) Considerations

In prescribing regulations described in paragraph (1)(A)—

(A) Periods of continuous residence

The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) Absences caused by deportation or advanced parole

The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) Waivers of certain absences

The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) Use of certain documentation

The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) Interim final regulations

Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance

(1) In general

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) of this section, and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and

(iii) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) of this section shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) Exceptions

Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 [8 U.S.C. 1255 note], as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(3) Restricted medicaid benefits

(A) Clarification of entitlement

Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) Restriction of benefits

(i) Limitation to emergency services and services for pregnant women

Notwithstanding any provision of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act [42 U.S.C. 1396a(a)(10)(B), (C)]), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act [42 U.S.C. 1396*o*(a)(2)(D)]), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) No restriction for exempt aliens and children

The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) Definition of medical assistance

In this paragraph, the term ''medical assistance'' refers to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) Treatment of certain programs

Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act [42 U.S.C. 1751 et seq.].

(B) The Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(C) The Vocational Education Act of 1963 [20 U.S.C. 2301 et seq.].

(D) Title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(E) The Headstart-Follow Through Act [42 U.S.C. 2921 et seq.].

(F) The Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(G) Title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(H) The Public Health Service Act [42 U.S.C. 201 et seq.].

(I) Titles V, XVI, and XX [42 U.S.C. 701 et seq., 1381 et seq., 1397 et seq.], and parts B, D, and E of title IV [42 U.S.C. 620 et seq., 651 et seq., 670 et seq.], of the Social Security Act (and titles I, X, XIV, and XVI of such Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.] as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) Adjustment not affecting Fascell-Stone benefits

For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122)[1] [8 U.S.C. 1255 note], assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) Dissemination of information on legalization program

Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A) of this section, the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

(June 27, 1952, ch. 477, title II, ch. 5, § 245A, as added Nov. 6, 1986, Pub. L. 99–603, title II, § 201(a)(1), 100 Stat. 3394; amended Oct. 24, 1988, Pub. L. 100–525, § 2(h)(1), 102 Stat. 2611; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(13), title VII, § 703, 104 Stat. 5083, 5086; Oct. 28, 1991, Pub. L. 102–140, title I, 105 Stat. 785; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(6), 105 Stat. 1756; Oct. 20, 1994, Pub. L. 103–382, title III, § 394(g), 108 Stat. 4028; Oct. 25, 1994, Pub. L. 103–416, title I, § 108(b), title II, § 219(*l*)(1), 108 Stat. 4310, 4317.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(4)(D), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see note set out under section 451 of Title 50, Appendix, and Tables.

Public Law 96–422, referred to in subsecs. (a) and (h)(2)(A), (5), is Pub. L. 96–422, Oct. 10, 1980, 94 Stat. 1799, as amended, which is known as the Refugee Education Assistance Act of 1980, and is set out as a note under section 1522 of this title.

Public Law 89–732, referred to in subsec. (c)(2)(B), is Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended, which is set out as a note under section 1255 of this title.

Public Law 95–145, referred to in subsec. (c)(2)(B), is Pub. L. 95–145, Oct. 28, 1977, 91 Stat. 1223, as amended. Title I of Pub. L. 95–145 is set out as a note under section 1255 of this title. Title II of Pub. L. 95–145 amended Pub. L. 94–23, which was set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse, and was repealed by Pub. L. 96–212, title III, § 312(c), Mar. 17, 1980, 94 Stat. 117.

Section 404 of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(5)(A), is section 404 of Pub. L. 99–603 which is set out as a note below.

The Social Security Act, referred to in subsec. (h)(1)(A), (3)(A)(ii), (B)(i), (C), (4)(I), is act Aug. 14, 1935,

[1] So in original. Probably should be ''(Public Law 96–422)''.

ch. 531, 49 Stat. 620, as amended. Parts A, B, D, and E of title IV of the Social Security Act are classified generally to parts A (§601 et seq.), B (§620 et seq.), D (§651 et seq.), and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles I, V, X, XIV, XVI, XIX, and XX of the Social Security Act are classified generally to subchapters I (§301 et seq.), V (§701 et seq.), X (§1201 et seq.), XIV (§1351 et seq.), XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (h)(4)(I), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of Title 42.

The Food Stamp Act of 1977, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The National School Lunch Act, referred to in subsec. (h)(4)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (h)(4)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Vocational Education Act of 1963, referred to in subsec. (h)(4)(C), was title I of Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 94–482, title II, §202(a), Oct. 12, 1976, 90 Stat. 2169, which was classified to chapter 44 (§2301 et seq.) of Title 20, Education, prior to amendment by Pub. L. 98–524, §1, Oct. 19, 1984, 98 Stat. 2435, striking out all after the enacting clause and inserting in lieu thereof titles I to V, to be cited as the Carl D. Perkins Vocational Education Act. Subsequently, Pub. L. 101–392, Sept. 25, 1990, 104 Stat. 753, amended the Act to be cited as the Carl D. Perkins Vocational and Applied Technology Education Act. For additional details, see Codification note preceding section 2301 of Title 20.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (h)(4)(D), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Headstart-Follow Through Act, referred to in subsec. (h)(4)(E), is title V of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 527, as amended, which was classified generally to subchapter V (§2921 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 97–35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Job Training Partnership Act, referred to in subsec. (h)(4)(F), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified principally to chapter 19 (§1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Higher Education Act of 1965, referred to in subsec. (h)(4)(G), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (h)(4)(H), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1255a, Pub. L. 85–316, §9, Sept. 11, 1957, 71 Stat. 641, providing for adjustment of status of certain resident aliens to that of a person admitted for permanent residence, the recording by Attorney General of alien's lawful admission for permanent residence, and for granting of nonquota status to spouse and children, was repealed, eff. 180 days after Sept. 26, 1961, by Pub. L. 87–301, §24(a)(5), (b), Sept. 26, 1961, 75 Stat. 657.

AMENDMENTS

1994—Subsec. (b)(1)(D)(i)(I), (iii). Pub. L. 103–416, §108(b), substituted ''1423(a)'' for ''1423''.

Subsec. (c)(7)(C). Pub. L. 103–416, §219(*l*)(1), realigned margins and substituted ''subparagraph (B)'' for ''subsection (B)''.

Subsec. (h)(4)(D). Pub. L. 103–382 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''Chapter 1 of the Education Consolidation and Improvement Act of 1981.''

1991—Subsec. (c)(7)(C). Pub. L. 102–140, which directed the addition ''after subsection (B)'' of ''a new subsection'' (C), was executed by adding subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d)(2)(B)(ii). Pub. L. 102–232, substituted ''Subclause (IV)'' for ''Subclause (II)'' in last sentence, added subcl. (III), redesignated former subcl. (III) as (II) and former subcl. (II) as (IV), and struck out former subcl. (IV) which read as follows: ''Paragraphs (3) (relating to security and related grounds), other than subparagraph (E) thereof.''

1990—Subsec. (b)(1)(A). Pub. L. 101–649, §703(a)(1), substituted ''2-year period'' for ''one-year period''.

Subsec. (b)(2)(C). Pub. L. 101–649, §703(a)(2), substituted ''43rd'' for ''thirty-first''.

Subsec. (c)(7)(A). Pub. L. 101–649, §703(b), inserted at end ''The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) of this section after the end of the first year of the 2-year period described in subsection (b)(1)(A) of this section.''

Subsec. (d)(2)(A). Pub. L. 101–649, §603(a)(13)(A), substituted ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)''.

Subsec. (d)(2)(B)(ii). Pub. L. 101–649, §603(a)(13)(G), substituted ''1182(a)(4)'' for ''1182(a)(15)'' in last sentence.

Subsec. (d)(2)(B)(ii)(I). Pub. L. 101–649, §603(a)(13)(B), substituted ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)''.

Subsec. (d)(2)(B)(ii)(II). Pub. L. 101–649, §603(a)(13)(C), substituted ''(4)'' for ''(15)''.

Subsec. (d)(2)(B)(ii)(III). Pub. L. 101–649, §603(a)(13)(D), substituted ''(2)(C)'' for ''(23)''.

Subsec. (d)(2)(B)(ii)(IV). Pub. L. 101–649, §603(a)(13)(E), substituted ''(3) (relating to security and related grounds), other than subparagraph (E) thereof'' for ''(27), (28), and (29) (relating to national security and members of certain organizations)''.

Subsec. (d)(2)(B)(ii)(V). Pub. L. 101–649, §603(a)(13)(F), struck out subcl. (V) which referred to par. (33).

Subsec. (d)(2)(B)(iii). Pub. L. 101–649, §603(a)(13)(H), substituted ''1182(a)(4)'' for ''1182(a)(15)''.

1988—Subsec. (a)(1)(B). Pub. L. 100–525, §2(h)(1)(A), substituted ''12-month'' for ''18-month''.

Subsec. (b)(1)(D)(ii). Pub. L. 100–525, §2(h)(1)(B), inserted references to developmentally disabled in heading and text.

Subsec. (c)(1). Pub. L. 100–525, §2(h)(1)(C), amended closing provisions generally without change.

Subsec. (c)(5). Pub. L. 100–525, § 2(h)(1)(D)(ii), substituted semicolon for period at end of first sentence and inserted ''except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.''

Subsec. (c)(5)(A). Pub. L. 100–525, § 2(h)(1)(D)(i), inserted ''or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986'' after ''paragraph (6)''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–525, § 2(h)(1)(E)(ii), inserted at end ''Subclause (II) (prohibiting the waiver of section 1182(a)(15) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).''

Subsec. (d)(2)(B)(ii)(II). Pub. L. 100–525, § 2(h)(1)(E)(i), struck out ''by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a) of this section'' after ''permanent residence''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 219(*l*)(1) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(13) of Pub. L. 101–649 applicable to applications for adjustment of status made on or after June 1, 1991, see section 601(e)(2) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

REPORT ON CITIZENSHIP OF CERTAIN LEGALIZED ALIENS

Section 109 of Pub. L. 103–416 provided that: ''Not later than June 30, 1996, the Commissioner of the Immigration and Naturalization Service shall prepare and submit to the Congress a report concerning the citizenship status of aliens legalized under section 245A and section 210 of the Immigration and Nationality Act [8 U.S.C. 1255a, 1160]. Such report shall include the following information by district office for each national origin group:

''(1) The number of applications for citizenship filed.

''(2) The number of applications approved.

''(3) The number of applications denied.

''(4) The number of applications pending.''

FAMILY UNITY

Section 301 of Pub. L. 101–649, as amended by Pub. L. 101–649, title VI, § 603(a)(23), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 103–416, title II, § 206(a), Oct. 25, 1994, 108 Stat. 4311, provided that:

''(a) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN ELIGIBLE IMMIGRANTS.—The Attorney General shall provide that in the case of an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C)) or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A)), who has entered the United States before such date, who resided in the United States on such date, and who is not lawfully admitted for permanent residence, the alien—

''(1) may not be deported or otherwise required to depart from the United States on a ground specified in paragraph (1)(A), (1)(B), (1)(C), (3)(A), of section 241(a) of the Immigration and Nationality Act [8 U.S.C. 1251(a)] (other than so much of section 241(a)(1)(A) of such Act as relates to a ground of exclusion described in paragraph (2) or (3) of section 212(a) of such Act [8 U.S.C. 1182(a)]), and

''(2) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

''(b) ELIGIBLE IMMIGRANT AND LEGALIZED ALIEN DEFINED.—In this section:

''(1) The term 'eligible immigrant' means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

''(2) The term 'legalized alien' means an alien lawfully admitted for temporary or permanent residence who was provided—

''(A) temporary or permanent residence status under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160],

''(B) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], or

''(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below].

''(c) APPLICATION OF DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.

''(d) TEMPORARY DISQUALIFICATION FROM CERTAIN PUBLIC WELFARE ASSISTANCE.—Aliens provided the benefits of this section by virtue of their relation to a legalized alien described in subsection (b)(2)(A) or (b)(2)(B) shall be ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under section 245A(h) or 210(f), respectively, of the Immigration and Nationality Act [8 U.S.C. 1255a(h), 1160(f)].

''(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for the benefits of this section if the Attorney General finds that—

''(1) the alien has been convicted of a felony or 3 or more misdemeanors in the United States, or

''(2) the alien is described in section 243(h)(2) of the Immigration and Nationality Act [8 U.S.C. 1253(h)(2)].

''(f) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

''(g) EFFECTIVE DATE.—This section shall take effect on October 1, 1991; except that the delay in effectiveness of this section shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.''

[Section 206(b) of Pub. L. 103–416 provided that: ''The amendment made by subsection (a) [amending section 301 of Pub. L. 101–649, set out above] shall be deemed to have become effective as of October 1, 1991.'']

USE OF CAPITAL ASSETS BY IMMIGRATION AND NATURALIZATION SERVICE

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000, provided: ''That for fiscal year 1990 and hereafter capital assets acquired by the Immigration Legalization account may be made available for the general use of the Immigration and Naturalization Service after they

are no longer needed for immigration legalization purposes''.

ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF COUNTRIES FOR WHICH EXTENDED VOLUNTARY DEPARTURE HAS BEEN MADE AVAILABLE

Pub. L. 100–204, title IX, § 902, Dec. 22, 1987, 101 Stat. 1400, provided that:

''(a) ADJUSTMENT OF STATUS.—The status of any alien who is a national of a foreign country the nationals of which were provided (or allowed to continue in) 'extended voluntary departure' by the Attorney General on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987, shall be adjusted by the Attorney General to that of an alien lawfully admitted for temporary residence if the alien—

''(1) applies for such adjustment within two years after the date of the enactment of this Act [Dec. 22, 1987];

''(2) establishes that (A) the alien entered the United States before July 21, 1984, and (B) has resided continuously in the United States since such date and through the date of the enactment of this Act;

''(3) establishes continuous physical presence in the United States (other than brief, casual, and innocent absences) since the date of the enactment of this Act;

''(4) in the case of an alien who entered the United States as a nonimmigrant before July 21, 1984, establishes that (A) the alien's period of authorized stay as a nonimmigrant expired not later than six months after such date through the passage of time or (B) the alien applied for asylum before July 21, 1984; and

''(5) meets the requirements of section 245A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(4)).

The Attorney General shall provide for the acceptance and processing of applications under this subsection by not later than 90 days after the date of the enactment of this Act.

''(b) STATUS AND ADJUSTMENT OF STATUS.—The provisions of subsections (b), (c)(6), (d), (f), (g), (h), and (i) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) shall apply to aliens provided temporary residence under subsection (a) in the same manner as they apply to aliens provided lawful temporary residence status under section 245A(a) of such Act.''

Similar provisions were contained in Pub. L. 100–202, § 101(a) [title IX, §§ 901, 902], Dec. 22, 1987, 101 Stat. 1329, 1329–43.

PROCEDURES FOR PROPERTY ACQUISITION OR LEASING

Section 201(c)(1) of Pub. L. 99–603 provided that: ''Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section [enacting this section and amending sections 602, 672, and 673 of this title]. This authority shall end two years after the effective date of the legalization program.''

USE OF RETIRED FEDERAL EMPLOYEES

Section 201(c)(2) of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(h)(2), Oct. 24, 1988, 102 Stat. 2612, provided that: ''Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the pay and annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section [enacting this section and amending sections 602, 672, and 673 of this title]. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.''

CUBAN-HAITIAN ADJUSTMENT

Section 202 of Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(i), Oct. 24, 1988, 102 Stat. 2612, provided that:

''(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

''(1) the alien applies for such adjustment within two years after the date of the enactment of this Act [Nov. 6, 1986];

''(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (16), (17), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(14)–(17), (20), (21), (25), (32)] shall not apply and the Attorney General may, in his discretion, waive the grounds for exclusion specified in paragraph (19) of such section;

''(3) the alien is not an alien described in section 243(h)(2) of such Act [8 U.S.C. 1253(h)(2)];

''(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

''(5) the alien has continuously resided in the United States since January 1, 1982.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien—

''(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act [Nov. 6, 1986], or

''(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

''(c) NO AFFECT ON FASCELL-STONE BENEFITS.—An alien who, as of the date of the enactment of this Act [Nov. 6, 1986], is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96–422 [8 U.S.C. 1522 note] shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

''(d) RECORD OF PERMANENT RESIDENCE AS OF JANUARY 1, 1982.—Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and the Attorney General shall not be required to charge the alien any fee.

''(f) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, du-

ties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.''

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

Section 204 of Pub. L. 99–603, as amended by Pub. L. 100–525, §2(k), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1174; Pub. L. 101–238, §6(a), Dec. 18, 1989, 103 Stat. 2104; Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2206; Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1124; Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1808; Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2558; Pub. L. 103–416, title II, §219(cc), Oct. 25, 1994, 108 Stat. 4319, provided that:

''(a) APPROPRIATION OF FUNDS.—

''(1) IN GENERAL.—(A) Out of any money in the Treasury not otherwise appropriated, there are appropriated to carry out this section (and including Federal, State, and local administrative costs) $1,000,000,000 (less the amount described in paragraph (2)) for fiscal year 1988 and for each of the three succeeding fiscal years.

''(B) Funds appropriated for fiscal year 1990 under this section are reduced by $555,244,000, and funds appropriated for fiscal year 1991 under this section are reduced by $566,854,000.

''(C) For fiscal years 1993 and 1994 combined, there are appropriated to carry out this section for costs incurred on or after October 1, 1989 (including Federal, State, and local administrative costs) out of any money in the Treasury not otherwise appropriated, $2,000,000,000 (less the amount described in paragraph (2) for each of fiscal years 1990 and 1991) less the amount made available for allotments to States under subsection (b) for fiscal year 1990 and fiscal year 1991: *Provided*, That $812,000,000 shall be available in fiscal year 1994 and the remainder of these funds shall be available in fiscal year 1993.

''(2) OFFSET.—

''(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the amount described in this paragraph for a fiscal year is equal to the amount estimated to be expended by the Federal Government in the fiscal year for the programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] for aliens who would not be eligible for such assistance under paragraph (1)(A) of section 245A(h) of the Immigration and Nationality Act [8 U.S.C. 1255a(h)(1)(A)] but for the provisions of paragraph (2) or paragraph (3) of such section.

''(B) NO OFFSET FOR CERTAIN SSI ELIGIBLE INDIVIDUALS.—The amount described in this paragraph shall not include any amounts attributable to supplemental security benefits paid under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] or medical assistance furnished under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], in the case of an alien who is determined by the Secretary of Health and Human Services, based on an application for benefits under title XVI of the Social Security Act or section 212 of Public Law 93–66 [42 U.S.C. 1382 note] filed prior to the date designated by the Attorney General in accordance with section 245A(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1255a(a)(1)(A)], to be permanently residing in the United States under color of law as provided in section 1614(a)(1)(B)(ii) of the Social Security Act [42 U.S.C. 1382c(a)(1)(B)(ii)] and to be eligible to receive such benefits for the month prior to the month in which such date occurs, for such time as such alien continues without interruption to be eligible to receive such benefits in accordance with the provisions of title XVI of the Social Security Act or section 212 of Public Law 93–66, as appropriate.

''(C) ESTIMATED INITIAL OFFSET.—For purposes of subparagraph (A), with respect to fiscal year 1988, the amount estimated to be expended is equal to $70,000,000. For subsequent fiscal years, the amount estimated to be expended shall be such estimate as is contained in the annual fiscal budget submitted for that year to the Congress by the President.

''(D) ADJUSTMENT FOR ESTIMATES.—If the actual amount of expenditures by the Federal Government described in subparagraph (A) for a fiscal year exceeds, or is less than, the amount estimated to be expended for that year under subparagraph (C) (taking into account any adjustment under this subparagraph), then for the subsequent fiscal year the amount described in this paragraph shall be decreased, or increased, respectively, by the amount of such excess or deficit for that previous fiscal year.

''(b) ENTITLEMENT OF STATES.—(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall allot to each State with an application approved under subsection (d)(1) an amount determined in accordance with a formula, established by the Secretary by regulation, which takes into account—

''(A) the number of eligible legalized aliens (as defined in subsection (j)(4)) residing in the State in that fiscal year;

''(B) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year;

''(C) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens for which reimbursement or payment may be made under this section;

''(D) the ratio of the amount of such expenditures in the State to the total of all such expenditures in all the States;

''(E) adjustments for the difference in previous years between the State's actual expenditures (described in subparagraph (C)) incurred and the allocation provided the State under this section for those years; and

''(F) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such amounts.

''(2) To the extent that all the funds appropriated under this section for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under this section for the fiscal year or because some States have indicated in their description of activities that they do not intend to use, in that fiscal year or any succeeding fiscal year (before fiscal year 1995), the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

''(3) In determining the number of eligible legalized aliens for purposes of paragraph (1), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

''(4) For each fiscal year the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under this subsection. Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the purposes for which it was made in subsequent fiscal years, but shall not remain available after September 30, 1994. Any funds not expended by States by December 30, 1994 shall be reallocated by the Secretary to States which had expended their entire allotments, based on each State's percentage share of total unreimbursed legal-

ized alien costs in all States. Funds made available to a State pursuant to the preceding sentence of this paragraph shall be utilized by the State to reimburse all allowable costs within 90 days after a State has received a reallocation of funds from the Secretary, but in no event later than July 31, 1995.

''(5) For fiscal year 1993, the Secretary shall make allotments to States under paragraph (1) no later than October 15, 1992, *Provided*, That with respect to States in which total allowable unreimbursed State and local costs incurred prior to October 1, 1992 exceed $100,000,000, within each such State's allocation, the State shall first reimburse all allowable costs incurred between October 1, 1990 and October 1, 1992, before reimbursing costs incurred on or after October 1, 1992, except for State and local administrative costs and for costs of services required to enable aliens granted temporary residence under section 245A(a) of the Immigration and Nationality Act [8 U.S.C. 1255a(a)] to attain citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act: *Provided further*, That in reimbursing costs incurred prior to October 1, 1992, each State shall reimburse each provider at the same pro rata rate.

''(c) PROVIDING ASSISTANCE.—(1) Of the amounts allotted to a State under this section, the State may only use such funds, in accordance with this section—

''(A) for reimbursement of the costs of programs of public assistance provided with respect to eligible legalized aliens, for which such aliens were not disqualified under section 245A(h) of the Immigration and Nationality Act [8 U.S.C. 1255a(h)] at the time of such assistance,

''(B) for reimbursement of the costs of programs of public health assistance provided to any alien who is, or is applying on a timely basis to become, an eligible legalized alien,

''(C) to make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens,

''(D) to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding—

''(i) the requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act [8 U.S.C. 1160, 1161, 1255a] regarding the adjustment of resident status,

''(ii) sources of assistance for such aliens obtaining the adjustment of status described in clause (i), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence,

''(iii) the identification of health, employment, and social services, and

''(iv) the importance of identifying oneself as a temporary resident alien to service providers,

except that nothing in this subparagraph may be construed as authorizing the provision of client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status described in clause (i),

''(E)(i) subject to clause (ii), to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status,

''(ii) except that the State agencies shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

Subject to paragraph (2), the State may select the distribution of the use of such funds among such purposes.

''(2)(A) Subject to subparagraphs (B) and (C), of the amounts allotted to a State under this section in any fiscal year, 10 percent shall be used by the State for reimbursement under paragraph (1)(A), 10 percent shall be used by the State for reimbursement under paragraph (1)(B), and 10 percent shall be used by the State for payments under paragraph (1)(C).

''(B) If a State does not require the use of the full 10 percent provided under subparagraph (A) for a particular function described in a subparagraph of paragraph (1) for a fiscal year, the unused portion shall, subject to subparagraph (C), be equally distributed among the two other subparagraphs.

''(C) In no case shall the funds provided under this section be used to provide reimbursement for more than 100 percent of the costs described in paragraph (1)(A) or (1)(B).

''(D) Of the amount allotted to a State with respect to any fiscal year, a State may not use more than—

''(i) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(D), and

''(ii) 1 percent (or, if greater, $100,000) for payments under paragraph (1)(E).

''(3) To the extent that a State provides for the use of funds for the purpose described in paragraph (1)(C), the definitions and provisions of the Emergency Immigrant Education Act of 1984 (title VI of Public Law 98-511; 20 U.S.C. 4101 et seq.) shall apply to payments under such paragraph in the same manner as they apply to payments under that Act, except that, in applying this paragraph—

''(A) any reference in such Act to 'immigrant children' shall be deemed to be a reference to 'eligible legalized aliens' (including such aliens who are over 16 years of age) during the 60-month period beginning with the first month in which such an alien is granted temporary lawful residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.];

''(B) in determining the amount of payment with respect to eligible legalized aliens who are over 16 years of age, the phrase 'described under paragraph (2)' shall be deemed to be stricken from section 606(b)(1)(A) of such Act (20 U.S.C. 4105(b)(1)(A));

''(C) the State educational agency may provide such educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations, including community-based organizations of demonstrated effectiveness; and

''(D) such services may include English language and other programs designed to enable such aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act [8 U.S.C. 1255a(b)(1)(D)(i)].

''(d) STATEMENTS AND ASSURANCES.—(1) No State is eligible for payment under subsection (b) unless the State—

''(A) has filed with, and had approved by, the Secretary an application containing such information, including the information described in paragraph (2) and criteria for and administrative methods of disbursing funds received under this section, as the Secretary determines to be necessary to carry out this section, and

''(B) transmits to the Secretary a statement of assurances that certifies that (i) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c)(1), (ii) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies in accordance with paragraph (2) and subsection (c)(2), and (iii) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of paragraph (2) and subsections (e) and (f).

''(2) The application of each State under this subsection for each fiscal year must include detailed information on—

''(A) the number of eligible legalized aliens residing in the State, and

''(B) the costs (excluding any such costs otherwise paid from Federal funds) which the State and each locality is likely to incur for the purposes described in subsection (c)(1).

''(e) REPORTS AND AUDITS.—(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order to properly evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary—

''(i) to secure an accurate description of those activities,

''(ii) to secure a complete record of the purposes for which funds were spent and of the recipients of such funds, and

''(iii) to determine the extent to which funds were expended consistent with this section.

Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

''(B) The Secretary shall annually report to the Congress on activities funded under this section and shall provide for transmittal of a copy of such report to each State.

''(2)(A) For requirements relating to audits of funds received by a State under this section, see chapter 75 of title 31, United States Code (relating to requirements for single audit).

''(B) Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this section, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this section.

''(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

''(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

''(4)(A) For the purpose of evaluating and reviewing the assistance provided under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such assistance, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

''(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

''(f) LIMITATION ON PAYMENTS.—(1) Payment under this section shall not be made for costs to the extent the costs are otherwise reimbursed or paid for under other Federal programs.

''(2) Payment may only be made to a State with respect to costs for assistance of a program of public assistance or a program of public health assistance to the extent such assistance is otherwise generally available under such programs to citizens residing in the State.

''(g) CRIMINAL PENALTIES FOR FALSE STATEMENTS.—Whoever—

''(1) knowingly and willfully makes or causes to be made any false statement or misrepresentation of a material fact in connection with the furnishing of assistance or services for which payment may be made by a State from funds allotted to the State under this section, or

''(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined in accordance with title 18, United States Code, imprisoned for not more than five years, or both.

''(h) ANTI-DISCRIMINATION PROVISION.—(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

''(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

''(2) Whenever the Secretary finds that a State or locality which has been provided payment from an allotment under this section has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

''(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

''(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

''(C) take such other action as may be provided by law.

''(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

''(i) CONSULTATION WITH STATE AND LOCAL OFFICIALS.—In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

''(j) DEFINITIONS.—For purposes of this section:

''(1) The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(36)].

''(2) The term 'programs of public assistance' means programs in a State or local jurisdiction which—

''(A) provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals,

''(B) are generally available to needy individuals residing in the State or locality, and

''(C) receive funding from units of State or local government.

''(3) The term 'programs of public health assistance' means programs in a State or local jurisdiction which—

''(A) provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services,

''(B) are generally available to needy individuals residing in the State or locality, and

''(C) receive funding from units of State or local government.

''(4) The term 'eligible legalized alien' means an alien who has been granted lawful temporary resident status under section 210, 210A, or 245A of the Immigration and Nationality Act [8 U.S.C. 1160, 1161,

1255a], but only until the end of the five-year period beginning on the date the alien was first granted such status, except that the five-year limitation shall not apply for the purposes of making payments from funds appropriated under the fiscal year 1995 Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act [Pub. L. 103–333, see Tables for classification] for providing public information and outreach activities regarding naturalization and citizenship; and English language and civics instruction to any adult eligible legalized alien who has not met the requirements of section 312 of the Immigration and Nationality Act [8 U.S.C. 1423] for purposes of becoming naturalized as a citizen of the United States.''

[Pub. L. 101–238, § 6(b), Dec. 18, 1989, 103 Stat. 2105, provided that: ''The amendments made by subsection (a) [amending section 204 of Pub. L. 99–603, set out above] shall apply to the use of allotments for fiscal years beginning with fiscal year 1989.'']

APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS

Section 303(c) of Pub. L. 99–603, defined ''eligible legalized alien'' relative to State legalization assistance, prior to repeal by Pub. L. 100–525, § 2(n)(3), Oct. 24, 1988, 102 Stat. 2613.

REPORTS ON LEGALIZATION PROGRAM

Section 404 of Pub. L. 99–603 provided that:

''(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

''(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

''(1) geographical origins and manner of entry of these aliens into the United States,

''(2) their demographic characteristics, and

''(3) a general profile and characteristics.

''(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

''(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

''(2) the patterns of employment of the legalized population, and

''(3) the participation of legalized aliens in social service programs.''

[Functions of President under section 404 of Pub. L. 99–603 relating to initial report described in section 404(b) delegated to Attorney General and relating to second report described in section 404(c) delegated to Secretary of Labor by sections 1(c) and 2(c) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1160, 1182, 1324b of this title; title 20 section 3283; title 26 section 6039E; title 42 sections 408, 602, 672, 1436a, 3056i.

§ 1255b. Adjustment of status of certain nonimmigrants to that of persons admitted for permanent residence

Notwithstanding any other provision of law—

(a) Application

Any alien admitted to the United States as a nonimmigrant under the provisions of either section 1101(a)(15)(A)(i) or (ii) or 1101(a)(15)(G)(i) or (ii) of this title, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) Record of admission

If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under this chapter, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for adjustment of status is made.

(c) Report to the Congress; resolution not favoring adjustment of status; reduction of quota

A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. The Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one the quota of the quota area to which the alien is chargeable under section 1152 of this title for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

(d) Limitations

The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed fifty.

(Pub. L. 85–316, § 13, Sept. 11, 1957, 71 Stat. 642; Pub. L. 97–116, § 17, Dec. 29, 1981, 95 Stat. 1619; Pub. L. 100–525, § 9(kk), Oct. 24, 1988, 102 Stat. 2622; Pub. L. 103–416, title II, § 207, Oct. 25, 1994, 108 Stat. 4312.)

CODIFICATION

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

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–416, § 207(1), struck out after second sentence ''If, during the session of the Congress at which a case is reported, or prior to the close of the session of Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the adjustment of status of such alien, the Attorney General shall thereupon require the departure of such alien in the manner provided by law.''

Pub. L. 103–416, § 207(2), which directed that subsec. (c) be amended by substituting ''The'' for ''If neither the

Senate nor the House of Representatives passes such a resolution within the time above specified the'', was executed by making the substitution in text which contained the phrase ''specified, the'' rather than ''specified the'', to reflect the probable intent of Congress.

1988—Subsec. (b). Pub. L. 100–525 struck out ''of'' after ''as of the date''.

1981—Subsec. (b). Pub. L. 97–116 inserted provision requiring that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest.

EFFECTIVE DATE OF 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.

DEFINITIONS; APPLICABILITY OF SECTION 1101(a) AND (b) OF THIS TITLE

The definitions in subsecs. (a) and (b) of section 1101 of this title apply to this section, see section 14 of Pub. L. 85–316, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
- Nonimmigrant alien, see section 1101(a)(15) of this title.
- Person of good moral character, see section 1101(f) of this title.
- United States, see section 1101(a)(38) of this title.

§ 1256. Rescission of adjustment of status; effect upon naturalized citizen

(a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 1255 or 1259 of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made.

(b) Any person who has become a naturalized citizen of the United States upon the basis of a record of a lawful admission for permanent residence, created as a result of an adjustment of status for which such person was not in fact eligible, and which is subsequently rescinded under subsection (a) of this section, shall be subject to the provisions of section 1451 of this title as a person whose naturalization was procured by concealment of a material fact or by willful misrepresentation.

(June 27, 1952, ch. 477, title II, ch. 5, § 246, 66 Stat. 217; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(m), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–416 struck out first three sentences which read as follows: ''If, at any time within five years after the status of a person has been adjusted under the provisions of section 1254 of this title or under section 19(c) of the Immigration Act of February 5, 1917, to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution withdrawing suspension of deportation, the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(m) of Pub. L. 103–416 provided that the amendment made by that section is effective Oct. 25, 1994.

CROSS REFERENCES

Definition of alien, Attorney General, and lawfully admitted for permanent residence, see section 1101 of this title.

§ 1257. Adjustment of status of certain resident aliens to nonimmigrant status; exceptions

(a) The status of an alien lawfully admitted for permanent residence shall be adjusted by the Attorney General, under such regulations as he may prescribe, to that of a nonimmigrant under paragraph (15)(A), (E), or (G) of section 1101(a) of this title, if such alien had at the time of entry or subsequently acquires an occupational status which would, if he were seeking admission to the United States, entitle him to a nonimmigrant status under such paragraphs. As of the date of the Attorney General's order making such adjustment of status, the Attorney General shall cancel the record of the alien's admission for permanent residence, and the immigrant status of such alien shall thereby be terminated.

(b) The adjustment of status required by subsection (a) of this section shall not be applicable in the case of any alien who requests that he be permitted to retain his status as an immigrant and who, in such form as the Attorney General may require, executes and files with the Attorney General a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order which would otherwise accrue to him because of the acquisition of an occupational status entitling him to a nonimmigrant status under paragraph (15)(A), (E), or (G) of section 1101(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 247, 66 Stat. 218.)

CROSS REFERENCES

Definition of alien, Attorney General, entry, immigrant, lawfully admitted for permanent residence, and nonimmigrant alien, see section 1101 of this title.

Issuance of immigrant visa to alien entitled to nonimmigrant status upon waiver of rights accruing from such status, see section 1184 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1184 of this title; title 50 App. section 456.

§ 1258. Change of nonimmigrant classification

The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 1101(a)(15) of this title,

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who came to the United States or acquired such classification in order to receive graduate medical education or training,

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) of this title and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 248, 66 Stat. 218; Sept. 21, 1961, Pub. L. 87–256, § 109(d), 75 Stat. 535; Dec. 29, 1981, Pub. L. 97–116, § 10, 95 Stat. 1617; Nov. 6, 1986, Pub. L. 99–603, title III, § 313(d), 100 Stat. 3439; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130003(b)(3), 108 Stat. 2025.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–322, which directed the substitution of ''(K), or (S)'' for ''or (K)'' in ''Section 248(1) of the Immigration and Naturalization Act'', was executed by making the substitution in par. (1) of this section, which is section 248 of the Immigration and Nationality Act, to reflect the probable intent of Congress.

1986—Par. (4). Pub. L. 99–603 added par. (4).

1981—Pub. L. 97–116 permitted certain exchange visitors who are not subject to a requirement of returning to their home countries for two years, or who have had such requirement waived, to adjust to a visitor or diplomat status, prohibited the adjustment of nonimmigrant status by fiancee or fiance nonimmigrants, and specifically precluded the change of status with respect to doctors who have entered the United States as exchange visitors for graduate medical training, even if they have received a waiver of the two-year foreign residence requirement.

1961—Pub. L. 87–256 inserted references to paragraph (15)(J) of section 1101(a) of this title in two places.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of alien, Attorney General, and nonimmigrant alien, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1201, 1228, 1251, 1252, 1252b, 1254a of this title.

§ 1259. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972

A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 1182(a)(3)(E) of this title or under section 1182(a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to January 1, 1972;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

(June 27, 1952, ch. 477, title II, ch. 5, § 249, 66 Stat. 219; Aug. 8, 1958, Pub. L. 85–616, 72 Stat. 546; Oct. 3, 1965, Pub. L. 89–236, § 19, 79 Stat. 920; Nov. 6, 1986, Pub. L. 99–603, title II, § 203(a), 100 Stat. 3405; Oct. 24, 1988, Pub. L. 100–525, § 2(j), 102 Stat. 2612; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(a)(14), 104 Stat. 5083.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''1182(a)(3)(E)'' for ''1182(a)(33)''.

1988—Pub. L. 100–525 amended Pub. L. 99–603. See 1986 Amendment note below.

1986—Pub. L. 99–603, as amended by Pub. L. 100–525, inserted ''under section 1182(a)(33) of this title or'' in introductory provisions and substituted ''January 1, 1972'' for ''June 30, 1948'' in section heading and in par. (a).

1965—Pub. L. 89–236 substituted ''June 30, 1948'' for ''June 28, 1940''.

1958—Pub. L. 85–616 permitted record of lawful admission to be made in the case of aliens who entered the United States prior to June 28, 1940, authorized the record to be made as of the date of the approval of the application for those who entered subsequent to July 1, 1924, and prior to June 28, 1940, and substituted provisions requiring the alien to satisfy the Attorney General that he is not inadmissible under section 1182(a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens for provisions which required the alien to satisfy the Attorney General that he was not subject to deportation.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

APPLICABILITY OF NUMERICAL LIMITATIONS

Section 203(c) of Pub. L. 99–603 provided that: ''The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to aliens provided lawful permanent resident status under section 249 of that Act [8 U.S.C. 1259].''

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Entry, see section 1101(a)(13) of this title.
Ineligible to citizenship, see section 1101(a)(19) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Permanent, see section 1101(a)(31) of this title.
Person of good moral character, see section 1101(f) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252b, 1256, 1444 of this title; title 7 section 2015; title 42 sections 408, 1436a.

§ 1260. Removal of aliens falling into distress

The Attorney General may remove from the United States any alien who falls into distress or who needs public aid from causes arising subsequent to his entry, and is desirous of being so removed, to the native country of such alien, or to the country from which he came, or to the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him, at the expense of the appropriation for the enforcement of this chapter. Any alien so removed shall be ineligible to apply for or receive a visa or other documentation for readmission, or to apply for admission to the United States except with the prior approval of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 5, § 250, 66 Stat. 219.)

CROSS REFERENCES

Definition of alien, application for admission, Attorney General, entry, and United States, see section 1101 of this title.

PART VI—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEN

§ 1281. Alien crewmen

(a) Arrival; submission of list; exceptions

Upon arrival of any vessel or aircraft in the United States from any place outside the United States it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof to deliver to an immigration officer at the port of arrival (1) a complete, true, and correct list containing the names of all aliens employed on such vessel or aircraft, the positions they respectively hold in the crew of the vessel or aircraft, when and where they were respectively shipped or engaged, and those to be paid off or discharged in the port of arrival; or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(b) Reports of illegal landings

It shall be the duty of any owner, agent, consignee, master, or commanding officer of any vessel or aircraft to report to an immigration officer, in writing, as soon as discovered, all cases in which any alien crewman has illegally landed in the United States from the vessel or aircraft, together with a description of such alien and any information likely to lead to his apprehension.

(c) Departure; submission of list; exceptions

Before the departure of any vessel or aircraft from any port in the United States, it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof, to deliver to an immigration officer at that port (1) a list containing the names of all alien employees who were not employed thereon at the time of the arrival at that port but who will leave such port thereon at the time of the departure of such vessel or aircraft and the names of those, if any, who have been paid off or discharged, and of those, if any, who have deserted or landed at that port, or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(d) Violations

In case any owner, agent, consignee, master, or commanding officer shall fail to deliver complete, true, and correct lists or reports of aliens, or to report cases of desertion or landing, as required by subsections (a), (b), and (c) of this section, such owner, agent, consignee, master, or commanding officer, shall, if required by the Attorney General, pay to the Commissioner the sum of $200 for each alien concerning whom such lists are not delivered or such reports are not made as required in the preceding subsections. In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, consignee, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel. No such vessel or aircraft shall be granted clearance from any port at which it arrives pending the determination of the question of the liability to the payment of such fine, and if such fine is imposed, while it remains unpaid. No such fine shall be remitted or refunded. Clearance may be granted prior to the determination of such question upon deposit of a bond or a sum sufficient to cover such fine.

(e) Regulations

The Attorney General is authorized to prescribe by regulations the circumstances under which a vessel or aircraft shall be deemed to be arriving in, or departing from the United States or any port thereof within the meaning of any provision of this Part.

(June 27, 1952, ch. 477, title II, ch. 6, § 251, 66 Stat. 219; Nov. 29, 1990, Pub. L. 101–649, title II, § 203(b), 104 Stat. 5018; Dec. 12, 1991, Pub. L. 102–232, title III, § 303(a)(3), 105 Stat. 1746.)

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–232 substituted ''consignee'' for ''charterer'' after ''the owner, agent,'' in second sentence.

1990—Subsec. (d). Pub. L. 101–649 substituted ''pay to the Commissioner the sum of $200'' for ''pay to the collector of customs of any customs district in which the vessel or aircraft may at any time be found the sum of $10'' and inserted after first sentence ''In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, charterer, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel.''

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, set out as a note under section 1101 of this title.

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Amendment by section 203(b) of Pub. L. 101–649 not to affect performance of longshore work in United States by citizens or nationals of United States, see section 203(a)(2) of Pub. L. 101–649, set out as a note under section 1288 of this title.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, immigration officer, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1288, 1330 of this title.

§ 1282. Conditional permits to land temporarily

(a) Period of time

No alien crewman shall be permitted to land temporarily in the United States except as provided in this section and sections 1182(d)(3), (5) and 1283 of this title. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15)(D) of section 1101(a) of this title and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b) of this section, and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Revocation; expenses of detention

Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection.

(c) Penalties

Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued under subsection (a) of this section shall be fined under title 18 or imprisoned not more than 6 months, or both.

(June 27, 1952, ch. 477, title II, ch. 6, § 252, 66 Stat. 220; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(1), 104 Stat. 5059; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(3), 105 Stat. 1752.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–232 substituted ''fined under title 18'' for ''fined not more than $2,000 (or, if greater, the amount provided under title 18)''.

1990—Subsec. (c). Pub. L. 101–649 substituted ''shall be fined not more than $2,000 (or, if greater, the amount provided under title 18) or imprisoned not more than 6 months'' for ''shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months''.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, immigration officer, nonimmigrant alien, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1253, 1283, 1284 of this title.

§ 1283. Hospital treatment of alien crewmen afflicted with certain diseases

An alien crewman, including an alien crewman ineligible for a conditional permit to land under section 1282(a) of this title, who is found on arrival in a port of the United States to be afflicted with any of the disabilities or diseases mentioned in section 1285 of this title, shall be placed in a hospital designated by the immigration officer in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, commanding officer, or master of the vessel or aircraft, and not to be deducted from the crewman's wages. No such vessel or aircraft shall be granted clearance until such expenses are paid, or their payment appropriately guaranteed, and the collector of customs is so notified by the immigration officer in charge. An alien crewman suspected of being afflicted with any such disability or disease may be removed from the vessel or aircraft on which he arrived to an immigration station, or other appropriate place, for such observation as will enable the examining surgeons to determine definitely whether or not he is so afflicted, all expenses connected therewith to be borne in the manner hereinbefore prescribed. In cases in which it appears to the satisfaction of the immigration officer in charge that it will not be possible within a reasonable time to effect a cure, the return of the alien crewman shall be enforced on, or at the expense of, the transportation line on which he came, upon such conditions as the Attorney General shall prescribe, to insure that the alien shall be properly cared for and protected, and that the spread of contagion shall be guarded against.

(June 27, 1952, ch. 477, title II, ch. 6, § 253, 66 Stat. 221.)

CROSS REFERENCES

Definition of alien, Attorney General, crewman, immigration officer, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1282, 1284, 1330 of this title.

§ 1284. Control of alien crewmen

(a) Penalties for failure

The owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof who fails (1) to detain on board the vessel, or in the case of an aircraft to detain at a place specified by an immigration officer at the expense of the airline, any alien crewman employed thereon until an immigration officer has completely inspected such alien crewman, including a physical examination by the medical examiner, or (2) to detain any alien crewman on board the vessel, or in the case of an aircraft at a place specified by an immigration officer at the expense of the airline, after such inspection unless a conditional permit to land temporarily has been granted such alien crewman under section 1282 of this title or unless an alien crewman has been permitted to land temporarily under section 1182(d)(5) or 1283 of this title for medical or hospital treatment, or (3) to deport such alien crewman if required to do so by an immigration officer, whether such deportation requirement is imposed before or after the crewman is permitted to land temporarily under section 1182(d)(5), 1282, or 1283 of this title, shall pay to the Commissioner the sum of $3,000 for each alien crewman in respect to whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The Attorney General may, upon application in writing therefor, mitigate such penalty to not less than $500 for each alien crewman in respect of whom such failure occurs, upon such terms as he shall think proper.

(b) Prima facie evidence against transportation line

Except as may be otherwise prescribed by regulations issued by the Attorney General, proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived in the United States from any place outside thereof, or that he was reported by the master or commanding officer of such vessel or aircraft as a deserter, shall be prima facie evidence of a failure to detain or deport such alien crewman.

(c) Deportation on other than arriving vessel or aircraft; expenses

If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

(June 27, 1952, ch. 477, title II, ch. 6, § 254, 66 Stat. 221; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(4), 104 Stat. 5058; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(4)(C), 105 Stat. 1752.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' before period at end of penultimate sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000'' and ''$500'' for ''$200''.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, immigration officer, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1321, 1330 of this title.

§ 1285. Employment on passenger vessels of aliens afflicted with certain disabilities

It shall be unlawful for any vessel or aircraft carrying passengers between a port of the United States and a port outside thereof to have employed on board upon arrival in the United States any alien afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis in any form, leprosy, or any dangerous contagious disease. If it appears to the satisfaction of the Attorney General, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel or aircraft and that the existence of such affliction might have been detected by means of a competent medical examination at such time, the owner, commanding officer, agent, consignee, or master thereof shall pay for each alien so afflicted to the Commissioner the sum of $1,000. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums or of a bond approved by the Commissioner with sufficient surety to secure the payment thereof. Any such fine may, in the discretion of the Attorney General, be mitigated or remitted.

(June 27, 1952, ch. 477, title II, ch. 6, § 255, 66 Stat. 222; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(5), 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''Commissioner the sum of $1,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $50'' in second sentence, and ''Commissioner'' for ''collector of customs'' in third sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

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

CROSS REFERENCES

Definition of alien, Attorney General, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1283, 1330 of this title.

§ 1286. Discharge of alien crewmen; penalties

It shall be unlawful for any person, including the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft, to pay off or discharge any alien crewman, except an alien lawfully admitted for permanent residence, employed on board a vessel or aircraft arriving in the United States without first having obtained the consent of the Attorney General. If it shall appear to the satisfaction of the Attorney General that any alien crewman has been paid off or discharged in the United States in violation of the provisions of this section, such owner, agent, consignee, charterer, master, commanding officer, or other person, shall pay to the Commissioner the sum of $3,000 for each such violation. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond approved by the Commissioner with sufficient surety to secure the payment thereof. Such fine may, in the discretion of the Attorney General, be mitigated to not less than $1,500 for each violation, upon such terms as he shall think proper.

(June 27, 1952, ch. 477, title II, ch. 6, § 256, 66 Stat. 223; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(6), 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the violation occurred the sum of $1,000'' in second sentence, ''Commissioner'' for ''collector of customs'' in third sentence, and ''$1,500'' for ''$500'' in fourth sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

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

CROSS REFERENCES

Definition of alien, Attorney General, crewman, lawfully admitted for permanent residence, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title; title 22 section 450.

§ 1287. Alien crewmen brought into the United States with intent to evade immigration laws; penalties

Any person, including the owner, agent, consignee, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof, who shall knowingly sign on the vessel's articles, or bring to the United States as one of the crew of such vessel or aircraft, any alien, with intent to permit or assist such alien to enter or land in the United States in violation of law, or who shall falsely and knowingly represent to a consular officer at the time of application for visa, or to the immigration officer at the port of arrival in the United States, that such alien is a bona fide member of the crew employed in any capacity regularly required for normal operation and services aboard such vessel or aircraft, shall be liable to a penalty not exceeding $10,000 for each such violation, for which sum such vessel or aircraft shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

(June 27, 1952, ch. 477, title II, ch. 6, § 257, 66 Stat. 223; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(7), 104 Stat. 5058.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''$10,000'' for ''$5,000''.

EFFECTIVE DATE OF 1990 AMENDMENT

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

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Definition of alien, consular officer, crewman, entry, immigration laws, immigration officer, and United States, see section 1101 of this title.

Proceedings for forfeitures and seizures, see section 2461 of Title 28, Judiciary and Judicial Procedure.

§ 1288. Limitations on performance of longshore work by alien crewmen

(a) In general

For purposes of section 1101(a)(15)(D)(i) of this title, the term ''normal operation and service on board a vessel'' does not include any activity that is longshore work (as defined in subsection (b) of this section), except as provided under subsection (c), (d), or (e) of this section.

(b) "Longshore work" defined

(1) In general

In this section, except as provided in paragraph (2), the term ''longshore work'' means any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

(2) Exception for safety and environmental protection

The term ''longshore work'' does not include the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of title 46 (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 1321 of title 33, section 4106 of the Oil Pollution Act of 1990, or section 5103(b), 5104, 5106, 5107, or 5110 of title 49 prescribed regulations which govern—

(A) the handling or stowage of such cargo,

(B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and

(C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.

(3) Construction

Nothing in this section shall be construed as broadening, limiting, or otherwise modifying the meaning or scope of longshore work for purposes of any other law, collective bargaining agreement, or international agreement.

(c) Prevailing practice exception

(1) Subsection (a) of this section shall not apply to a particular activity of longshore work in and about a local port if—

(A)(i) there is in effect in the local port one or more collective bargaining agreements each covering at least 30 percent of the number of individuals employed in performing longshore work and (ii) each such agreement (covering such percentage of longshore workers) permits the activity to be performed by alien crewmen under the terms of such agreement; or

(B) there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work, and an employer of alien crewmen (or the employer's designated agent or representative) has filed with the Secretary of Labor at least 14 days before the date of performance of the activity (or later, if necessary due to an unanticipated emergency, but not later than the date of performance of the activity) an attestation setting forth facts and evidence to show that—

(i) the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port as of the date of filing of the attestation and that the use of alien crewmen for such activity—

(I) is not during a strike or lockout in the course of a labor dispute, and

(II) is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(ii) notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice of the attesta-

tion has been provided to longshore workers employed at the local port.

In applying subparagraph (B) in the case of a particular activity of longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel, the attestation shall be required to be filed only if the Secretary of Labor finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of such particular activity is not described in clause (i) of such subparagraph.

(2) Subject to paragraph (4), an attestation under paragraph (1) shall—

(A) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(B) apply to aliens arriving in the United States during such 1-year period if the owner, agent, consignee, master, or commanding officer states in each list under section 1281 of this title that it continues to comply with the conditions in the attestation.

(3) An owner, agent, consignee, master, or commanding officer may meet the requirements under this subsection with respect to more than one alien crewman in a single list.

(4)(A) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying owners, agents, consignees, masters, or commanding officers which have filed lists for nonimmigrants described in section 1101(a)(15)(D)(i) of this title with respect to whom an attestation under paragraph (1) or subsection (d)(1) of this section is made and, for each such entity, a copy of the entity's attestation under paragraph (1) or subsection (d)(1) of this section (and accompanying documentation) and each such list filed by the entity.

(B)(i) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting an entity's failure to meet conditions attested to, an entity's misrepresentation of a material fact in an attestation, or, in the case described in the last sentence of paragraph (1), whether the performance of the particular activity is or is not described in paragraph (1)(B)(i).

(ii) Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary).

(iii) The Secretary shall promptly conduct an investigation under this subparagraph if there is reasonable cause to believe that an entity fails to meet conditions attested to, an entity has misrepresented a material fact in the attestation, or, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in paragraph (1)(B)(i).

(C)(i) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to an attestation, a complaining party may request that the activities attested to by the employer cease during the hearing process described in subparagraph (D). If such a request is made, the attesting employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D).

(ii) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to a matter under the last sentence of paragraph (1), a complaining party may request that the activities of the employer cease during the hearing process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1). If such a request is made, the employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1).

(D) Under the process established under subparagraph (B), the Secretary shall provide, within 180 days after the date a complaint is filed (or later for good cause shown), for a determination as to whether or not a basis exists to make a finding described in subparagraph (E). The Secretary shall provide notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(E)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an entity has failed to meet a condition attested to or has made a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 for each alien crewman performing unauthorized longshore work) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not permit the vessels owned or chartered by such entity to enter any port of the United States during a period of up to 1 year.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, that, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in subparagraph (B)(i), the Secretary shall notify the Attorney General of such finding and, thereafter, the attestation described in paragraph (1) shall be required of the employer for the performance of the particular activity.

(F) A finding by the Secretary of Labor under this paragraph that the performance of an activity by alien crewmen is not permitted under the prevailing practice of a local port shall preclude for one year the filing of a subsequent attestation concerning such activity in the port under paragraph (1).

(5) Except as provided in paragraph (5) of subsection (d) of this section, this subsection shall not apply to longshore work performed in the State of Alaska.

(d) State of Alaska exception

(1) Subsection (a) of this section shall not apply to a particular activity of longshore work at a particular location in the State of Alaska if an employer of alien crewmen has filed an attestation with the Secretary of Labor at least 30 days before the date of the first performance of the activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time) setting forth facts and evidence to show that—

(A) the employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided under clauses (ii) and (iii) of subparagraph (D), except that—

(i) wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization described in subparagraph (D)(i), the employer may request longshore workers from only one of such contract stevedoring companies, and

(ii) a request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 932 of title 33;

(B) the employer will employ all those United States longshore workers made available in response to the request made pursuant to subparagraph (A) who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location;

(C) the use of alien crewmembers for such activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and

(D) notice of the attestation has been provided by the employer to—

(i) labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act [29 U.S.C. 151 et seq.] and which make available or intend to make available workers to the particular location where the longshore work is to be performed,

(ii) contract stevedoring companies which employ or intend to employ United States longshore workers at that location, and

(iii) operators of private docks at which the employer will use longshore workers.

(2)(A) An employer filing an attestation under paragraph (1) who seeks to use alien crewmen to perform longshore work shall be responsible while at[1] the attestation is valid to make bona fide requests for United States longshore workers under paragraph (1)(A) and to employ United States longshore workers, as provided in paragraph (1)(B), before using alien crewmen to perform the activity or activities specified in the attestation, except that an employer shall not be required to request longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers to the location at which the longshore work is to be performed.

(B) If a party that has provided such notice subsequently notifies the employer in writing that it is prepared to make available United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity to the location at which the longshore work is to be performed, then the employer's obligations to that party under subparagraphs (A) and (B) of paragraph (1) shall begin 60 days following the issuance of such notice.

(3)(A) In no case shall an employer filing an attestation be required—

(i) to hire less than a full work unit of United States longshore workers needed to perform the longshore activity;

(ii) to provide overnight accommodations for the longshore workers while employed; or

(iii) to provide transportation to the place of work, except where—

(I) surface transportation is available;

(II) such transportation may be safely accomplished;

(III) travel time to the vessel does not exceed one-half hour each way; and

(IV) travel distance to the vessel from the point of embarkation does not exceed 5 miles.

(B) In the cases of Wide Bay, Alaska, and Klawock/Craig, Alaska, the travel times and travel distances specified in subclauses (III) and (IV) of subparagraph (A)(iii) shall be extended to 45 minutes and 7½ miles, respectively, unless the party responding to the request for longshore workers agrees to the lesser time and distance limitations specified in those subclauses.

(4) Subject to subparagraphs (A) through (D) of subsection (c)(4) of this section, attestations filed under paragraph (1) of this subsection shall—

(A) expire at the end of the 1-year period beginning on the date the employer anticipates the longshore work to begin, as specified in the attestation filed with the Secretary of Labor, and

(B) apply to aliens arriving in the United States during such 1-year period if the owner, agent, consignee, master, or commanding officer states in each list under section 1281 of this title that it continues to comply with the conditions in the attestation.

(5)(A) Except as otherwise provided by subparagraph (B), subsection (c)(3) of this section and subparagraphs (A) through (E) of subsection (c)(4) of this section shall apply to attestations filed under this subsection.

(B) The use of alien crewmen to perform longshore work in Alaska consisting of the use of an automated self-unloading conveyor belt or vacu-

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

um-actuated system on a vessel shall be governed by the provisions of subsection (c) of this section.

(6) For purposes of this subsection—

(A) the term ''contract stevedoring companies'' means those stevedoring companies licensed to do business in the State of Alaska that meet the requirements of section 932 of title 33;

(B) the term ''employer'' includes any agent or representative designated by the employer; and

(C) the terms ''qualified'' and ''available in sufficient numbers'' shall be defined by reference to industry standards in the State of Alaska, including safety considerations.

(e) Reciprocity exception

(1) In general

Subject to the determination of the Secretary of State pursuant to paragraph (2), the Attorney General shall permit an alien crewman to perform an activity constituting longshore work if—

(A) the vessel is registered in a country that by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels; and

(B) nationals of a country (or countries) which by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels hold a majority of the ownership interest in the vessel.

(2) Establishment of list

The Secretary of State shall, in accordance with section 553 of title 5, compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. By not later than 90 days after November 29, 1990, the Secretary shall publish a notice of proposed rulemaking to establish such list. The Secretary shall first establish such list by not later than 180 days after November 29, 1990.

(3) "In practice" defined

For purposes of this subsection, the term ''in practice'' refers to an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof.

(June 27, 1952, ch. 477, title II, ch. 6, §258, as added Nov. 29, 1990, Pub. L. 101–649, title II, §203(a)(1), 104 Stat. 5015; amended Dec. 12, 1991, Pub. L. 102–232, title III, §303(a)(4), 105 Stat. 1747; Dec. 17, 1993, Pub. L. 103–198, §8(a), (b), 107 Stat. 2313, 2315; Dec. 20, 1993, Pub. L. 103–206, title III, §323(a), (b), 107 Stat. 2428, 2430; Oct. 25, 1994, Pub. L. 103–416, title II, §219(f), (gg), 108 Stat. 4317, 4319.)

REFERENCES IN TEXT

Section 4106 of the Oil Pollution Act of 1990, referred to in subsec. (b)(2), is section 4106 of Pub. L. 101–380, title IV, Aug. 18, 1990, 104 Stat. 513, which amended section 1228 of Title 33, Navigation and Navigable Waters, and sections 6101 and 9101 of Title 46, Shipping.

The National Labor Relations Act, referred to in subsec. (d)(1)(D)(i), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

CODIFICATION

In subsec. (b)(2), ''section 5103(b), 5104, 5106, 5107, or 5110 of title 49'' substituted for ''section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805)'' on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1994—Subsecs. (a), (c)(4)(A), (5). Pub. L. 103–416, §219(gg), repealed Pub. L. 103–198, §8(b), which had made amendments identical to those made by Pub. L. 103–206, §323(b). See 1993 Amendment note below.

Subsec. (d). Pub. L. 103–416, §219(gg), repealed Pub. L. 103–198, §8(a), which had made an amendment substantially identical to that made by Pub. L. 103–206, §323(a). See 1993 Amendment note below.

Subsec. (d)(3)(B). Pub. L. 103–416, §219(f), substituted ''subparagraph (A)(iii)'' for ''subparagraph (A)''.

Subsec. (e). Pub. L. 103–416, §219(gg), repealed Pub. L. 103–198, §8(a), which had made an amendment substantially identical to that made by Pub. L. 103–206, §323(a). See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–206, §323(b)(1), substituted ''subsection (c), (d), or (e) of this section'' for ''subsection (c) of this section or subsection (d) of this section''. Pub. L. 103–198, §8(b)(1), which amended subsec. (a) identically, was repealed by Pub. L. 103–416, §219(gg).

Subsec. (c)(4)(A). Pub. L. 103–206, §323(b)(2), inserted ''or subsection (d)(1) of this section'' after ''paragraph (1)'' in two places. Pub. L. 103–198, §8(b)(2), which amended subpar. (A) identically, was repealed by Pub. L. 103–416, §219(gg).

Subsec. (c)(5). Pub. L. 103–206, §323(b)(3), added par. (5). Pub. L. 103–198, §8(b)(3), which amended subsec. (c) identically, was repealed by Pub. L. 103–416, §219(gg).

Subsecs. (d), (e). Pub. L. 103–206, §323(a), added subsec. (d) and redesignated former subsec. (d) as (e). Pub. L. 103–198, §8(a), which made substantially identical amendments to this section, was repealed by Pub. L. 103–416, §219(gg).

1991—Subsec. (c)(2)(B). Pub. L. 102–232 substituted ''each list'' for ''each such list''.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE

Section applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

REGULATIONS

Section 323(c) of Pub. L. 103–206 provided that:

''(1) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this section [amending this section].

''(2) Attestations filed pursuant to section 258(c) (8 U.S.C. 1288(c)) with the Secretary of Labor before the date of enactment of this Act [Dec. 20, 1993] shall remain valid until 60 days after the date of issuance of final regulations by the Secretary under this section.''

Similar provisions were contained in Pub. L. 103–198, § 8(c), Dec. 17, 1993, 107 Stat. 2315, prior to repeal by Pub. L. 103–416, title II, § 219(gg), Oct. 25, 1994, 108 Stat. 4319.

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Section 203(a)(2) of Pub. L. 101–649 provided that: ''This section [enacting this section, amending section 1101 of this title, and enacting provisions set out as a note under section 1101 of this title] does not affect the performance of longshore work in the United States by citizens or nationals of the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1281 of this title.

PART VII—REGISTRATION OF ALIENS

§ 1301. Alien seeking entry; contents

No visa shall be issued to any alien seeking to enter the United States until such alien has been registered in accordance with section 1201(b) of this title.

(June 27, 1952, ch. 477, title II, ch. 7, § 261, 66 Stat. 223; Nov. 14, 1986, Pub. L. 99–653, § 8, 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, § 8(g), 102 Stat. 2617.)

AMENDMENTS

1988—Pub. L. 100–525 made technical correction to Pub. L. 99–653. See 1986 Amendment note below.

1986—Pub. L. 99–653, as amended by Pub. L. 100–525, amended section generally, striking out ''and fingerprinted'' after ''has been registered'' and substituting ''section 1201(b) of this title'' for ''section 1201(b) of this title, unless such alien has been exempted from being fingerprinted as provided in that section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

CROSS REFERENCES

Definition of alien, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304 of this title.

§ 1302. Registration of aliens

(a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) of this section in the case of any nonimmigrant.

(June 27, 1952, ch. 477, title II, ch. 7, § 262, 66 Stat. 224; Nov. 14, 1986, Pub. L. 99–653, § 9, 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, § 8(h), 102 Stat. 2617; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(n), 108 Stat. 4317.)

REFERENCES IN TEXT

The Alien Registration Act, 1940, referred to in subsecs. (a) and (b), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Sections 30 and 31 of that act were classified to sections 451 and 452 of this title and were repealed by section 403(a)(39) of act June 27, 1952.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–416 substituted ''subsections (a) and (b)'' for ''subsection (a) and (b)''.

1988—Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Pub. L. 99–653, § 9, as amended by Pub. L. 100–525, added subsec. (c). As originally enacted, Pub. L. 99–653, § 9, amended subsec. (a) of this section by striking out ''section 1201(b) of this title or'' after ''registered and fingerprinted under''. Pub. L. 100–525 revised Pub. L. 99–653, § 9, so as to add subsec. (c) and eliminate the original amendment of subsec. (a), thereby restoring the words ''section 1201(b) of this title or''. See Effective Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

WAIVER OF FINGERPRINTING REQUIREMENTS FOR NONIMMIGRANT ALIENS

Authority of the Secretary of State and the Attorney General to waive the requirement of fingerprinting specified in this section, in the case of any nonimmigrant alien, see section 1201a of this title.

CROSS REFERENCES

Definition of alien, parent, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304 of this title.

§ 1303. Registration of special groups

(a) Notwithstanding the provisions of sections 1301 and 1302 of this title, the Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of deportation, and (5) aliens of any other class not lawfully admitted to the United States for permanent residence.

(b) The provisions of section 1302 of this title and of this section shall not be applicable to any alien who is in the United States as a nonimmigrant under section 1101(a)(15)(A) or (a)(15)(G) of this title until the alien ceases to be entitled to such a nonimmigrant status.

(June 27, 1952, ch. 477, title II, ch. 7, § 263, 66 Stat. 224.)

CROSS REFERENCES

Definition of alien, Attorney General, border crossing identification card, crewmen, lawfully admitted for permanent residence, and nonimmigrant alien, see section 1101 of this title.

§ 1304. Forms for registration and fingerprinting

(a) Preparation; contents

The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 1301 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 1302 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

(b) Confidential nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only (1) pursuant to section 1357(f)(2) of this title, and (2) to such persons or agencies as may be designated by the Attorney General.

(c) Information under oath

Every person required to apply for the registration of himself or another under this subchapter shall submit under oath the information required for such registration. Any person authorized under regulations issued by the Attorney General to register aliens under this subchapter shall be authorized to administer oaths for such purpose.

(d) Certificate of alien registration or alien receipt card

Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General.

(e) Personal possession of registration or receipt card; penalties

Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both.

(June 27, 1952, ch. 477, title II, ch. 7, § 264, 66 Stat. 224; Nov. 14, 1986, Pub. L. 99–653, § 10, 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, § 8(i), 102 Stat. 2617; Nov. 29, 1990, Pub. L. 101–649, title V, § 503(b)(2), 104 Stat. 5049.)

REFERENCES IN TEXT

The Alien Registration Act, 1940, referred to in subsec. (d), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Title III of that act, which related to register and fingerprinting of aliens, was classified to sections 451 to 460 of this title, was repealed by section 403(a)(39) of act June 27, 1952.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–649 inserted ''(1) pursuant to section 1357(f)(2) of this title, and (2)'' after ''only''.

1988—Subsec. (a). Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–653, as amended by Pub. L. 100–525, amended first sentence generally, striking out ''and fingerprinting'' before ''of aliens under section 1301''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

CROSS REFERENCES

Definition of alien, Attorney General, entry, and United States, see section 1101 of this title.

§ 1305. Notices of change of address

(a) Notification of change

Each alien required to be registered under this subchapter who is within the United States shall notify the Attorney General in writing of each change of address and new address within ten days from the date of such change and furnish with such notice such additional information as the Attorney General may require by regulation.

(b) Current address of natives of any one or more foreign states

The Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

(c) Notice to parent or legal guardian

In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be given to such parent or legal guardian.

(June 27, 1952, ch. 477, title II, ch. 7, § 265, 66 Stat. 225; Dec. 29, 1981, Pub. L. 97–116, § 11, 95 Stat. 1617; Oct. 24, 1988, Pub. L. 100–525, § 9(*o*), 102 Stat. 2620.)

AMENDMENTS

1988—Pub. L. 100–525 inserted ''Notices of change of address'' as section catchline.

1981—Pub. L. 97–116 amended section generally and in adding subsection designations struck out the annual registration requirement for permanent resident aliens and the registration requirement for those aliens in a lawful temporary residence who were to notify the Attorney General in writing of an address every three months while residing in the United States and inserted provision authorizing the Attorney General, in his discretion and upon ten days notice, to require the natives of any one or more foreign states who are in the United States and required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as required.

EFFECTIVE DATE OF 1981 AMENDMENT

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

CROSS REFERENCES

Definition of alien, Attorney General, parent, residence, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1306 of this title.

§ 1306. Penalties

(a) Willful failure to register

Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Failure to notify change of address

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be taken into custody and deported in the manner provided by Part V of this subchapter, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(c) Fraudulent statements

Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in Part V of this subchapter.

(d) Counterfeiting

Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof, except when and as authorized under such rules and regulations as may be prescribed by the Attorney General, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both.

(June 27, 1952, ch. 477, title II, ch. 7, § 266, 66 Stat. 225.)

CROSS REFERENCES

Definition of alien, Attorney General, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

PART VIII—GENERAL PENALTY PROVISIONS

§ 1321. Prevention of unauthorized landing of aliens

(a) Failure to report; penalties

It shall be the duty of every person, including the owners, masters, officers, and agents of vessels, aircraft, transportation lines, or international bridges or toll roads, other than transportation lines which may enter into a contract as provided in section 1228 of this title, bringing an alien to, or providing a means for an alien to come to, the United States (including an alien crewman whose case is not covered by section 1284(a) of this title) to prevent the landing of such alien in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be liable to a penalty to be imposed by the Attorney General of $3,000 for each such

violation, which may, in the discretion of the Attorney General, be remitted or mitigated by him in accordance with such proceedings as he shall by regulation prescribe. Such penalty shall be a lien upon the vessel or aircraft whose owner, master, officer, or agent violates the provisions of this section, and such vessel or aircraft may be libeled therefor in the appropriate United States court.

(b) Prima facie evidence

Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

(c) Liability of owners and operators of international bridges and toll roads

(1) Any owner or operator of a railroad line, international bridge, or toll road who establishes to the satisfaction of the Attorney General that the person has acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a) of this section. The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section (within the meaning of paragraph (1) of this subsection).

(June 27, 1952, ch. 477, title II, ch. 8, § 271, 66 Stat. 226; Nov. 6, 1986, Pub. L. 99–603, title I, § 114, 100 Stat. 3383; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(8), 104 Stat. 5058.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649 substituted ''$3,000'' for ''$1,000''.

1986—Subsec. (c). Pub. L. 99–603 added subsec. (c).

EFFECTIVE DATE OF 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.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Definition of alien, Attorney General, crewman, entry, immigration officer, and United States, see section 1101 of this title.

Forfeitures and seizures—

Jurisdiction, see sections 1355 and 1356 of Title 28, Judiciary and Judicial Procedure.

Proceedings, see section 2461 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1356 of this title.

§ 1322. Bringing in aliens subject to exclusion on a health-related ground; persons liable; clearance papers; exceptions; "person" defined

(a) Any person who shall bring to the United States an alien (other than an alien crewman) who is excludable under section 1182(a)(1) of this title shall pay to the Commissioner for each and every alien so afflicted the sum of $3,000 unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of the excluding condition could not have been detected by the exercise of due diligence prior to the alien's embarkation.

(b) No vessel or aircraft shall be granted clearance papers pending determination of the question of liability to the payment of any fine under this section, or while the fines remain unpaid, nor shall such fines be remitted or refunded; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the Commissioner.

(c) Nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of entry in the United States aliens who are entitled by law to exemption from the excluding provisions of section 1182(a) of this title.

(d) As used in this section, the term ''person'' means the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft.

(June 27, 1952, ch. 477, title II, ch. 8, § 272, 66 Stat. 226; Oct. 3, 1965, Pub. L. 89–236, § 18, 79 Stat. 920; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(a)(9), title VI, § 603(a)(15), 104 Stat. 5058, 5083; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(*l*)(7), 105 Stat.

1757; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(*o*), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–416 struck out comma after ''every alien so afflicted''.

1991—Subsec. (a). Pub. L. 102–232 struck out comma before ''shall pay''.

1990—Pub. L. 101–649, § 603(a)(15)(D), substituted ''exclusion on a health-related ground'' for ''disability or afflicted with disease'' in section catchline.

Subsec. (a). Pub. L. 101–649, § 603(a)(15)(A), substituted ''excludable under section 1182(a)(1) of this title'' for ''(1) mentally retarded, (2) insane, (3) afflicted with psychopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict'' and ''the excluding condition'' for ''such disease or disability''.

Pub. L. 101–649, § 543(a)(9)(A), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$1,000''.

Subsec. (b). Pub. L. 101–649, § 603(a)(15)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Any person who shall bring to the United States an alien (other than an alien crewman) afflicted with any mental defect other than those enumerated in subsection (a) of this section, or any physical defect of a nature which may affect his ability to earn a living, as provided in section 1182(a)(7) of this title, shall pay to the Commissioner for each and every alien so afflicted, the sum of $3,000, unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation.''

Pub. L. 101–649, § 543(a)(9)(B), substituted ''Commissioner'' for ''collector of customs of the customs district in which the place of arrival is located'' and ''$3,000'' for ''$250''.

Subsec. (c). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 101–649, § 543(a)(9)(C), substituted ''Commissioner'' for ''collector of customs''.

Subsecs. (d), (e). Pub. L. 101–649, § 603(a)(15)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1965—Subsec. (a). Pub. L. 89–236 substituted ''mentally retarded'' for ''feeble-minded'', struck out references to epileptics and persons afflicted with tuberculosis and leprosy, and inserted reference to persons afflicted with sexual deviation.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Section 307(*l*) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(9) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(15) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–236 effective, except as otherwise provided, on first day of first month after expiration of thirty days following date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Crewman, see section 1101(a)(10) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigrant visa, see section 1101(a)(16) of this title.
- Nonimmigrant visa, see section 1101(a)(26) of this title.
- Person, as used in subchapter I of this chapter and this subchapter, see section 1101(b)(3) of this title.
- Service, see section 1101(a)(34) of this title.
- United States, see section 1101(a)(38) of this title.

Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1323. Unlawful bringing of aliens into United States

(a) Persons liable

It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this chapter or regulations issued thereunder.

(b) Evidence

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay to the Commissioner a fine of $3,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, an amount equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter fine to be delivered by the Commissioner to the alien on whose account the assessment is made. No vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remain[1] unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an

[1] So in original. Probably should be ''remains''.

amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

(c) Remission or refund

Except as provided in subsection (e) of this section, such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

(d) Alien stowaways

The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States who fails to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer, shall pay to the Commissioner a fine of $3,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The provisions of section 1225 of this title for detention of aliens for examination before special inquiry officers and the right of appeal provided for in section 1226 of this title shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.

(e) Reduction, refund, or waiver

A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

(June 27, 1952, ch. 477, title II, ch. 8, § 273, 66 Stat. 227; Nov. 29, 1990, Pub. L. 101–649, title II, § 201(b), title V, § 543(a)(10), 104 Stat. 5014, 5058; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(4)(D), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, §§ 209(a), 216, 219(p), 108 Stat. 4312, 4315, 4317.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416, § 219(p), in first sentence substituted ''Commissioner'' for ''collector of customs'' before ''to the alien''.

Pub. L. 103–416, § 209(a)(1), which directed that subsec. (b) be amended by substituting ''a fine of $3,000'' for ''the sum of $3000'', was executed in the first sentence by making the substitution for ''the sum of $3,000'', to reflect the probable intent of Congress.

Pub. L. 103–416, § 209(a)(2), (4), in first sentence substituted ''an amount equal to'' for ''a sum equal to'' and ''such latter fine'' for ''such latter sum'', and in second sentence substituted ''such fine or while such fine'' for ''such sums or while such sums'' and ''cover such fine'' for ''cover such sums''.

Subsec. (c). Pub. L. 103–416, § 209(a)(4), (5), substituted ''Except as provided in subsection (e) of this section, such fine'' for ''Such sums''.

Subsec. (d). Pub. L. 103–416, § 216, amended first sentence generally. Prior to amendment, first sentence read as follows: ''The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the Commissioner the sum of $3,000 for each alien stowaway, in respect of whom any such failure occurs.''

Pub. L. 103–416, § 209(a)(1), which directed that subsec. (d) be amended by substituting ''a fine of $3,000'' for ''the sum of $3000'', was executed in the first sentence by making the substitution for ''the sum of $3,000'', to reflect the probable intent of Congress.

Pub. L. 103–416, § 209(a)(3), in second sentence substituted ''an amount'' for ''a sum'' before ''sufficient to cover such fine''.

Subsec. (e). Pub. L. 103–416, § 209(a)(6), added subsec. (e).

1991—Subsec. (b). Pub. L. 102–232 substituted ''Commissioner'' for ''collector of customs'' before period at end of second sentence.

1990—Subsec. (a). Pub. L. 101–649, § 201(b)(1), inserted ''a valid passport and'' before ''an unexpired visa''.

Subsec. (b). Pub. L. 101–649, § 543(a)(10)(A), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000''.

Subsec. (c). Pub. L. 101–649, § 201(b)(2), inserted ''valid passport or'' before ''visa was required''.

Subsec. (d). Pub. L. 101–649, § 543(a)(10)(B), substituted ''Commissioner the sum of $3,000'' for ''collector of customs of the customs district in which the port of arrival is located the sum of $1,000'' in first sentence and ''Commissioner'' for ''collector of customs'' in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 209(b) of Pub. L. 103–416 provided that: ''The amendments made by this subsection [probably should be ''this section'', meaning section 209 of Pub. L. 103–416, which amended this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994].''

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(10) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

CROSS REFERENCES

Definition of alien, attorney general, immigration officer, and United States, see section 1101 of this title.

Funds collected to be held in trust, see section 1321 of Title 31, Money and Finance.

Revocation of visas or documents, notice prior to alien's embarkation as prerequisite to imposition of penalty, see section 1201 of this title.

Stowaways on vessels and aircraft, penalties generally, see section 2199 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1225, 1330, 1356 of this title.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i), be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), or (iv), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), or (iv) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), or (iv) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both..[1]

(b) Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions

(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a) of this section shall be seized and subject to forfeiture, except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been or is being used in a violation of subsection (a) of this section and circumstances exist where a warrant is not constitutionally required.

(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and con-

[1] So in original.

demnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may—

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration, or the Maritime Administration if appropriate under section 484(i) of title 40 take custody of the conveyance and remove it for disposition in accordance with law; or

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) Authority to arrest

No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(June 27, 1952, ch. 477, title II, ch. 8, § 274, 66 Stat. 228; Nov. 2, 1978, Pub. L. 95–582, § 2, 92 Stat. 2479; Dec. 29, 1981, Pub. L. 97–116, § 12, 95 Stat. 1617; Nov. 6, 1986, Pub. L. 99–603, title I, § 112, 100 Stat. 3381; Oct. 24, 1988, Pub. L. 100–525, § 2(d), 102 Stat. 2610; Sept. 13, 1994, Pub. L. 103–322, title VI, § 60024, 108 Stat. 1981.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, § 60024(1)(F), which directed the substitution of "shall be punished as provided in subparagraph (B)" for "shall be fined in accordance with title 18 or imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs" in concluding provisions, was executed by making the substitution in text which contained the words "United States Code," after "title 18,", to reflect the probable intent of Congress.

Pub. L. 103–322, § 60024(1)(A)–(E), (G), designated existing provisions of par. (1) as subpar. (A) of par. (1), redesignated subpars. (A) to (D) of former par. (1) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 103–322, § 60024(2), in concluding provisions, substituted "or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both." for "or imprisoned not more than five years, or both".

1988—Subsec. (a)(1). Pub. L. 100–525, § 2(d)(1), in closing provisions substituted "or imprisoned" for "imprisoned" and "this paragraph" for "this subsection".

Subsec. (b)(4)(C), (5). Pub. L. 100–525, § 2(d)(2), amended Pub. L. 99–603, § 112(b)(5), (8). See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–603, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

"(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

"(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

"(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

"(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the

immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided*, *however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.''

Subsec. (b)(1). Pub. L. 99–603, § 112(b)(1), (2), substituted ''has been or is being used'' for ''is used'' and ''seized and subject to'' for ''subject to seizure and'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99–603, § 112(b)(3), inserted ''or is being'' after ''has been''.

Subsec. (b)(3). Pub. L. 99–603, § 112(b)(4), substituted ''property'' for ''conveyances''.

Subsec. (b)(4)(C). Pub. L. 99–603, § 112(b)(5), as amended by Pub. L. 100–525, § 2(d)(2)(A), inserted '', or the Maritime Administration if appropriate under section 484(i) of title 40,''.

Subsec. (b)(4)(D). Pub. L. 99–603, § 112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99–603, § 112(b)(7)–(9), as amended by Pub. L. 100–525, § 2(d)(2)(B), substituted '', except that'' for '': *Provided*, That'' in provisions preceding subpar. (A), substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not lawfully entitled to enter, or reside within, the United States'' wherever appearing, inserted ''or of the Department of State'' in subpar. (B), and substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not entitled to enter, or reside within, the United States'' in subpar. (C).

1981—Subsec. (b). Pub. L. 97–116 strengthened the seizure and forfeiture authority by striking out the ''innocent owner'' exemption and merely requiring the Government to show probable cause that the conveyance seized has been used to illegally transport aliens, which when demonstrated, shifts the burden of proof to the owner or claimant to show by a preponderance of the evidence that the conveyance was not illegally used, by relieving the Government of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided probable cause for the original seizure was demonstrated, and by striking out the requirement that the Government satisfy any valid lien or third party interest in the conveyance without expense to the interest holder by providing the lienholders interest be satisfied only after costs associated with the seizure have been deducted.

1978—Subsecs. (b), (c). Pub. L. 95–582 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Crewman, see section 1101(a)(10) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigration officer, see section 1101(a)(18) of this title.
- Residence, see section 1101(a)(33) of this title.
- Service, see section 1101(a)(34) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title; title 10 section 374.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b) of this section.

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) of this section with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in

the manner described in subsection (b)(3) of this section) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) of this section with respect to the individual's referral.

(b) Employment verification system

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) of this section are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation

(A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual's—

(i) United States passport;

(ii) certificate of United States citizenship;

(iii) certificate of naturalization;

(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or

(v) resident alien card or other alien registration card, if the card—

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

(II) is evidence of authorization of employment in the United States.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired, recruited, or referred for such employment.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) Copying of documentation permitted

Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18.

(c) No authorization of national identification cards

Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and changes in employment verification system

(1) Presidential monitoring and improvements in system

(A) Monitoring

The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) of this section provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system

To the extent that the system established under subsection (b) of this section is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) of this section as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system

Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity

The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents

If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system

Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one's person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the

substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report

In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes

(i) Hearings and review

The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action

No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined

As used in this paragraph, the term ''major change'' means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act [42 U.S.C. 301 et seq.], including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) of this section are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b) of this section. No such project may extend over a period of longer than five years.

(B) Reports on projects

The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1) of this section,

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) of this section as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) of this section under this subsection.

(2) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing

(A) In general

Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where

the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2) of this section, the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) of this section (or subsection (d) of this section if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds

With respect to a violation of subsection (g)(1) of this section, the order under this subsection may provide for the remedy described in subsection (g)(2) of this section.

(7) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review

A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders

If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal penalties and injunctions for pattern or practice violations

(1) Criminal penalty

Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations

Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a) of this section, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of indemnity bonds

(1) Prohibition

It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employ-

ment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e) of this section, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous provisions

(1) Documentation

In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien

As used in this section, the term ''unauthorized alien'' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

(i) Effective dates

(1) 6-month public information period

During the six-month period beginning on the first day of the first month after November 6, 1986—

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of this section, and

(B) the Attorney General shall not conduct any proceeding, nor issue any order, under this section on the basis of any violation alleged to have occurred during the period.

(2) 12-month first citation period

In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) of this section during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue any order, under this section on the basis of such alleged violation or violations.

(3) Deferral of enforcement with respect to seasonal agricultural services

(A) In general

Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under this section on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B) Prohibition of recruitment outside the United States

(i) In general

During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Exception

Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 1160(a)(2) of this title (relating to performance of seasonal agricultural services).

(iii) Penalty for violation

A person, entity, or agent that violates clause (i) shall be deemed to be subject to an order under this section in the same manner as if it had violated subsection (a)(1)(A) of this section, without regard to paragraph (2) of this subsection.

(C) Definitions

In this paragraph:

(i) Application period

The term ''application period'' means the period described in section 1160(a)(1) of this title.

(ii) Seasonal agricultural services

The term ''seasonal agricultural services'' has the meaning given such term in section 1160(h) of this section.

(j) General Accounting Office reports

(1) In general

Beginning one year after November 6, 1986, and at intervals of one year thereafter for a period of three years after such date, the Comptroller General shall prepare and transmit to the Congress and to the taskforce established under subsection (k) of this section a report describing the results of a review of the implementation and enforcement of this section during the preceding twelve-month period, for the purpose of determining if—

(A) such provisions have been carried out satisfactorily;

(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(C) an unnecessary regulatory burden has been created for employers hiring such workers.

(2) Determination on discrimination

In each report, the Comptroller General shall make a specific determination as to whether the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

(3) Recommendations

If the Comptroller General has determined that such a pattern of discrimination has resulted, the report—

(A) shall include a description of the scope of that discrimination, and

(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(k) Review by taskforce

(1) Establishment of joint taskforce

The Attorney General, jointly with the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (j)(1) of this section.

(2) Recommendations to Congress

If the report transmitted includes a determination that the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(3) Congressional hearings

The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

(*l*) Termination date for employer sanctions

(1) If report of widespread discrimination and congressional approval

The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (j) of this section, if—

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Senate procedures for consideration

Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (n) of this section.

(m) Expedited procedures in House of Representatives

For the purpose of expediting the consideration and adoption of joint resolutions under subsection (*l*) of this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(n) Expedited procedures in Senate

(1) Continuity of session

For purposes of subsection (*l*) of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Rulemaking power

Paragraphs (3) and (4) of this subsection are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (*l*) of this section, and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(3) Committee consideration

(A) Motion to discharge

If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (*l*) of this section has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) Consideration of motion

A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is

privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(4) Motion to proceed to consideration

(A) In general

A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on resolution

Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate on motion

Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) Motions to limit debate

A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

(June 27, 1952, ch. 477, title II, ch. 8, §274A, as added Nov. 6, 1986, Pub. L. 99–603, title I, §101(a)(1), 100 Stat. 3360; amended Oct. 24, 1988, Pub. L. 100–525, §2(a)(1), 102 Stat. 2609; Nov. 29, 1990, Pub. L. 101–649, title V, §§521(a), 538(a), 104 Stat. 5053, 5056; Dec. 12, 1991, Pub. L. 102–232, title III, §§306(b)(2), 309(b)(11), 105 Stat. 1752, 1759; Oct. 25, 1994, Pub. L. 103–416, title II, §§213, 219(z)(4), 108 Stat. 4314, 4318.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(D)(iii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–416, §219(z)(4), made technical correction to Pub. L. 102–232, §306(b)(2). See 1991 Amendment note below.

Subsec. (d)(4)(A). Pub. L. 103–416, §213, substituted ''five'' for ''three'' in second sentence.

1991—Subsec. (b)(1)(D)(ii). Pub. L. 102–232, §309(b)(11), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (b)(3). Pub. L. 102–232, §306(b)(2), as amended by Pub. L. 103–416, §219(z)(4), made technical correction to Pub. L. 101–649, §538(a). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, §521(a), struck out ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''or other entity'' in introductory provisions, inserted ''to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(A)'' in subpar. (A), and inserted ''(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States'' after ''(B)'' in subpar. (B).

Subsec. (b)(3). Pub. L. 101–649, §538(a), as amended by Pub. L. 102–232, §306(b)(2), as amended by Pub. L. 103–416, §219(z)(4), inserted '', the Special Counsel for Immigration-Related Unfair Employment Practices,'' after ''officers of the Service''.

1988—Subsec. (b)(1)(A). Pub. L. 100–525, §2(a)(1)(A), substituted ''the first sentence of this paragraph'' for ''such sentence'' and ''such another document'' for ''such a document''.

Subsec. (d)(3)(D). Pub. L. 100–525, §2(a)(1)(B), in heading substituted ''defined'' for ''requiring two years notice and congressional review''.

Subsec. (e)(1). Pub. L. 100–525, §2(a)(1)(C)(i), inserted reference to subsec. (g)(1) in three places.

Subsec. (e)(3). Pub. L. 100–525, §2(a)(1)(C)(i), (ii), inserted reference to subsec. (g)(1) in two places and reference to par. (6) in two places.

Subsec. (e)(4)(A)(ii), (iii). Pub. L. 100–525, §2(a)(1)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (e)(6) to (9). Pub. L. 100–525, §2(a)(1)(C)(iii), (iv), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (g)(2). Pub. L. 100–525, §2(a)(1)(E), inserted reference to subsec. (e) of this section.

Subsec. (i)(3)(B)(iii). Pub. L. 100–525, §2(a)(1)(F), substituted ''an order'' for ''a order'' and ''subsection (a)(1)(A) of this section'' for ''paragraph (1)(A)''.

Subsec. (j)(1). Pub. L. 100–525, §2(a)(1)(G), made technical amendment to provision of original act which was translated as ''November 6, 1986,'' and struck out ''of the United States'' after ''Comptroller General''.

Subsec. (j)(2). Pub. L. 100–525, §2(a)(1)(H), substituted ''this section'' for ''that section''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(4) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(b)(2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 521(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to recruiting and referring occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 538(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

DATE OF ENACTMENT OF THIS SECTION FOR ALIENS EMPLOYED UNDER SECTION 8704 OF TITLE 46, SHIPPING

Date of enactment of this section with respect to aliens deemed employed under section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see section 5(f)(3) of Pub. L. 100–239, set out as a Construction note under section 8704 of Title 46.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Feb. 10, 1992, 57 F.R. 24345, provided:

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the ''Act'') (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [8 U.S.C. 1101 et seq.], I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the Federal Register the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

Authority of President under subsec. (d)(4) of this section to undertake demonstration projects of different changes in requirements of employment verification system delegated to Attorney General by section 2 of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–238, § 5, Dec. 18, 1989, 103 Stat. 2104, provided that:

''(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

''(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(b)(1)].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

''(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.''

INTERIM REGULATIONS

Section 101(a)(2) of Pub. L. 99–603 provided that: ''The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section [enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 405 of Title 42, The Public Health and Welfare].''

GRANDFATHER PROVISION FOR CURRENT EMPLOYEES

Section 101(a)(3) of Pub. L. 99–603 provided that:

''(A) Section 274A(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(a)(1)] shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].

''(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.''

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Section 101(d) of Pub. L. 99–603 provided that:

''(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

''(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

''(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974 [5 U.S.C. 552a, 552a note].

''(4) Such study shall be conducted within twelve months of the date of enactment of this Act [Nov. 6, 1986].

''(5) The Attorney General shall prepare and transmit to the Congress a report—

''(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

''(B) not later than twelve months after such date, setting forth the findings of such study.''

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

Section 101(e) of Pub. L. 99–603 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a], and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate.''

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Section 402 of Pub. L. 99–603 provided that: ''The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a] (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include—

''(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

''(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

''(3) an analysis of the impact of the enforcement of that section on—

''(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

''(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

''(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.''

[Functions of President under section 402 of Pub. L. 99–603 delegated to Attorney General, except functions in section 402(3)(A) which were delegated to Secretary of Labor, by sections 1(b) and 2(a) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1186, 1188, 1324b, 1324c of this title; title 18 section 1546; title 20 section 1091; title 29 sections 1813, 1851; title 46 section 8704.

§ 1324b. Unfair immigration-related employment practices

(a) Prohibition of discrimination based on national origin or citizenship status

(1) General rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–2], or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) "Protected individual" defined

As used in paragraph (1), the term ''protected individual'' means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a),[1] or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens

Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) Prohibition of intimidation or retaliation

It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so

[1] See References in Text note below.

intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g) of this section, to have been discriminated against.

(6) Treatment of certain documentary practices as employment practices

For purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

(b) Charges of violations

(1) In general

Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c) of this section). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) of this section if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel

(1) Appointment

The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the ''Special Counsel'') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties

The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1) of this section.

(3) Compensation

The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5.

(4) Regional offices

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of charges

(1) By Special Counsel

The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) Private actions

If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice. The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) Time limitations on complaints

No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1) of this section.

(e) Hearings

(1) Notice

Whenever a complaint is made that a person or entity has engaged in or is engaging in any

such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases

Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party

Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) Testimony and authority of hearing officers

(1) Testimony

The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges

In conducting investigations and hearings under this subsection[2] and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) Determinations

(1) Order

The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i) of this section.

(2) Orders finding violations

(A) In general

If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order

Such an order also may require the person or entity—

(i) to comply with the requirements of section 1324a(b) of this title with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 1324a(b)(5) of this title, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay;

(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against,

(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against,

(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against, and

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6) of this section, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against;

(v) to post notices to employees about their rights under this section and employers' obligations under section 1324a of this title;

(vi) to educate all personnel involved in hiring and complying with this section or section 1324a of this title about the requirements of this section or such section;

(vii) to remove (in an appropriate case) a false performance review or false warning from an employee's personnel file; and

[2] So in original. Probably should be ''section''.

(viii) to lift (in an appropriate case) any restrictions on an employee's assignments, work shifts, or movements.

(C) Limitation on back pay remedy

In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations

If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged and is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of attorney's fees

In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of final orders

(1) In general

Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(j) Court enforcement of administrative orders

(1) In general

If an order of the agency is not appealed under subsection (i)(1) of this section, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order

Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review

If, upon appeal of an order under subsection (i)(1) of this section, the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorneys' fees

In any judicial proceeding under subsection (i) of this section or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination dates

(1) This section shall not apply to discrimination in hiring, recruiting, or referring, or discharging of individuals occurring after the date of any termination of the provisions of section 1324a of this title, under subsection (*l*) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 1324a(j) of this title if—

(A) the Comptroller General determines, and so reports in such report that—

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 1324a of this title, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 1324a of this title shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (*l*) of such section.

(*l*) Dissemination of information concerning anti-discrimination provisions

(1) Not later than 3 months after November 29, 1990, the Special Counsel, in cooperation with the chairman of the Equal Employment Oppor-

tunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

(2) In order to carry out the campaign under this subsection, the Special Counsel—

(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

(3) There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year (beginning with fiscal year 1991).

(June 27, 1952, ch. 477, title II, ch. 8, § 274B, as added Nov. 6, 1986, Pub. L. 99–603, title I, § 102(a), 100 Stat. 3374; amended Oct. 24, 1988, Pub. L. 100–525, § 2(b), 102 Stat. 2610; Nov. 29, 1990, Pub. L. 101–649, title V, §§ 531, 532(a), 533(a), 534(a), 535(a), 536(a), 537(a), 539(a), 104 Stat. 5054–5056; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(b)(1), (3), (c)(1), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(q), 108 Stat. 4317.)

REFERENCES IN TEXT

Section 1161(a) of this title, referred to in subsec. (a)(3)(B), was repealed by Pub. L. 103–416, title II, § 219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

The Civil Rights Act of 1964, referred to in subsecs. (b)(2) and (*l*)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 252, as amended. Title VII of the Civil Rights Act of 1964 is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (g)(2)(C). Pub. L. 103–416 substituted ''the Special Counsel'' for ''an administrative law judge'' in first sentence.

1991—Subsec. (g)(2)(B)(iv)(II). Pub. L. 102–232, § 306(b)(1), substituted ''subclauses (III) and (IV)'' for ''subclause (IV)''.

Subsec. (g)(2)(B)(iv)(IV). Pub. L. 102–232, § 306(b)(3)(A), substituted a semicolon for period at end.

Subsec. (g)(2)(B)(v), (vi). Pub. L. 102–232, § 306(b)(3)(B), substituted semicolons for commas at end.

Subsec. (g)(2)(B)(vii). Pub. L. 102–232, § 306(b)(3)(C), (D), substituted a semicolon for comma at end and ''to remove (in an appropriate case)'' for ''to order (in an appropriate case) the removal of''.

Subsec. (g)(2)(B)(viii). Pub. L. 102–232, § 306(b)(3)(E), substituted ''to lift (in an appropriate case)'' for ''to order (in an appropriate case) the lifting of''.

Subsec. (g)(2)(D). Pub. L. 102–232, § 306(c)(1), substituted ''physically'' for ''physicially''.

1990—Subsec. (a)(1)(B). Pub. L. 101–649, § 533(a)(1), substituted ''protected individual'' for ''citizen or intending citizen''.

Subsec. (a)(3). Pub. L. 101–649, § 533(a)(2), (3), in heading and text substituted ''protected individual'' for ''citizen or intending citizen''.

Subsec. (a)(3)(B). Pub. L. 101–649, § 533(a)(4), substituted ''is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not'' for ''is an alien who—

''(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a), 1161(a), or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title, and

''(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not'', and in closing provisions substituted ''(i)'' and ''(ii)'' for ''(I)'' and ''(II)'', respectively.

Pub. L. 101–649, § 532(a), inserted reference to sections 1160(a) and 1161(a) of this title in cl. (i).

Subsec. (a)(5). Pub. L. 101–649, § 534(a), added par. (5).

Subsec. (a)(6). Pub. L. 101–649, § 535(a), added par. (6).

Subsec. (d)(2). Pub. L. 101–649, § 537(a), inserted ''the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and'' after ''120-day period,'', inserted ''within 90 days after the date of receipt of the notice'' before period at end, and inserted at end ''The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.''

Subsec. (g)(2)(B)(iii). Pub. L. 101–649, § 539(a)(1), struck out ''and'' at end.

Subsec. (g)(2)(B)(iv). Pub. L. 101–649, § 539(a)(2), which directed the substitution of a comma for the period at end of cl. (iv)(II), could not be executed because of the general amendment of cl. (iv) by Pub. L. 101–649, § 536(a), see below.

Pub. L. 101–649, § 536(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows:

''(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

''(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.''

Subsec. (g)(2)(B)(v) to (viii). Pub. L. 101–649, § 539(a)(3), added cls. (v) to (viii).

Subsec. (*l*). Pub. L. 101–649, § 531, added subsec. (*l*).

1988—Subsec. (a)(1). Pub. L. 100–525, § 2(b)(1), inserted reference to section 1324a(h)(3) of this title.

Subsec. (e)(3). Pub. L. 100–525, § 2(b)(2), struck out ''said'' before ''proceeding''.

Subsec. (g)(2)(A). Pub. L. 100–525, § 2(b)(3), substituted ''that'' for ''that that''.

Subsec. (g)(2)(B)(ii). Pub. L. 100–525, § 2(b)(4), substituted ''1324a'' for ''1324''.

Subsec. (g)(3). Pub. L. 100–525, § 2(b)(5), substituted ''engaged and'' for ''engaged or''.

Subsec. (h). Pub. L. 100–525, § 2(b)(6), substituted ''attorney's'' for ''attorneys'' '' in heading.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 532(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 533(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to unfair immigration-related employment practices occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 534(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 535(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990], but shall apply to actions occurring on or after such date.''

Section 536(b) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section] shall apply to unfair immigration-related employment practices occurring after the date of the enactment of this Act [Nov. 29, 1990].''

Section 537(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to charges received on or after the date of the enactment of this Act [Nov. 29, 1990].''

Section 539(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to orders with respect to unfair immigration-related employment practices occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

NO EFFECT ON EEOC AUTHORITY

Section 102(b) of Pub. L. 99–603 provided that: ''Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), or any other authority provided therein.''

§ 1324c. Penalties for document fraud

(a) Activities prohibited

It is unlawful for any person or entity knowingly—

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter,

(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter, or

(4) to accept or receive or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title.

(b) Exception

This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of title 18.

(c) Construction

Nothing in this section shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18.

(d) Enforcement

(1) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(2) Hearing

(A) In general

Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has

violated subsection (a) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

(3) Cease and desist order with civil money penalty

With respect to a violation of subsection (a) of this section, the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(A) not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation, or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance, or creation.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection.

(5) Judicial review

A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(6) Enforcement of orders

If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(June 27, 1952, ch. 477, title II, ch. 8, § 274C, as added Nov. 29, 1990, Pub. L. 101–649, title V, § 544(a), 104 Stat. 5059; amended Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(5)(A), 105 Stat. 1752; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(r), 108 Stat. 4317.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–416 substituted ''chapter 224 of title 18'' for ''title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)''.

1991—Subsec. (a)(2) to (4). Pub. L. 102–232 inserted ''or to provide'' after ''receive'' in pars. (2) and (4) and ''or to provide or attempt to provide'' after ''attempt to use'' in par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE

Section applicable to persons or entities that have committed violations on or after Nov. 29, 1990, see section 544(d) of Pub. L. 101–649, as amended, set out as an Effective Date of 1990 Amendment note under section 1251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1251, 1330 of this title.

§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(c) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 275, 66 Stat. 229; Nov. 10, 1986, Pub. L. 99–639, § 2(d), 100 Stat. 3542; Nov. 29, 1990, Pub. L. 101–649, title I, § 121(b)(3), title V, § 543(b)(2), 104 Stat. 4994, 5059; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(3), 105 Stat. 1752.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232 substituted ''fined under title 18'' for ''fined not more than $2,000 (or, if greater, the amount provided under title 18)''.

1990—Subsec. (a). Pub. L. 101–649, § 543(b)(2), inserted ''or attempts to enter'' after ''(1) enters'' and ''attempts to enter or'' after ''or (3)'', and substituted ''shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount

provided under title 18) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years'' for ''shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000''.

Subsec. (c). Pub. L. 101–649, § 121(b)(3), added subsec. (c).

1986—Pub. L. 99–639 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 121(b)(3) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 543(b)(2) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

CROSS REFERENCES

Definition of entry, immigration laws, immigration officer, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title; title 10 section 374.

§ 1326. Reentry of deported alien; criminal penalties for reentry of certain deported aliens

(a) Subject to subsection (b) of this section, any alien who—

(1) has been arrested and deported or excluded and deported, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously excluded and deported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection—

(1) whose deportation was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both; or

(2) whose deportation was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

For the purposes of this subsection, the term ''deportation'' includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.

(June 27, 1952, ch. 477, title II, ch. 8, § 276, 66 Stat. 229; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7345(a), 102 Stat. 4471; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(3), 104 Stat. 5059; Sept. 13, 1994, Pub. L. 103–322, title XIII, § 130001(b), 108 Stat. 2023.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322, in par. (1), inserted ''three or more misdemeanors involving drugs, crimes against the person, or both, or'' after ''commission of'' and substituted ''10'' for ''5'', in par. (2), substituted ''20'' for ''15'', and added concluding sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 2 years'' for ''shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000''.

1988—Pub. L. 100–690 designated existing provisions as subsec. (a), substituted ''Subject to subsection (b) of this section, any alien'' for ''Any alien'', and added subsec. (b).

EFFECTIVE DATE OF 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7345(b) of Pub. L. 100–690 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any alien who enters, attempts to enter, or is found in, the United States on or after the date of the enactment of this Act [Nov. 18, 1988].''

CROSS REFERENCES

Definition of alien, Attorney General, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title; title 10 section 374.

§ 1327. Aiding or assisting certain aliens to enter

Any person who knowingly aids or assists any alien excludable under section 1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 277, 66 Stat. 229; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7346(a), (c)(1), 102 Stat. 4471; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(4), title VI, § 603(a)(16), 104 Stat. 5059, 5084.)

AMENDMENTS

1990—Pub. L. 101–649, § 603(a)(16), substituted ''1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof)'' for ''1182(a)(9), (10), (23) (insofar as an alien excludable

under any such paragraph has in addition been convicted of an aggravated felony), (27), (28), or (29)''.

Pub. L. 101–649, § 543(b)(4), substituted ''shall be fined under title 18, or imprisoned not more than 10 years'' for ''shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $5,000 or by imprisonment for not more than five years''.

1988—Pub. L. 100–690 substituted ''certain aliens'' for ''subversive alien'' in section catchline and inserted ''(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony),'' after ''1182(a)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(b)(4) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

Amendment by section 603(a)(16) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7346(b) of Pub. L. 100–690 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any aid or assistance which occurs on or after the date of the enactment of this Act [Nov. 18, 1988].''

CROSS REFERENCES

Definition of alien, entry, and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 374.

§ 1328. Importation of alien for immoral purpose

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall be fined under title 18, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.

(June 27, 1952, ch. 477, title II, ch. 8, § 278, 66 Stat. 230; Nov. 29, 1990, Pub. L. 101–649, title V, § 543(b)(5), 104 Stat. 5059.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''shall be fined under title 18, or imprisoned not more than 10 years, or both'' for ''shall, in every such case, be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 and by imprisonment for a term of not more than ten years''.

EFFECTIVE DATE OF 1990 AMENDMENT

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

CROSS REFERENCES

Definition of alien and United States, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title; title 10 section 374.

§ 1329. Jurisdiction of district courts

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor.

(June 27, 1952, ch. 477, title II, ch. 8, § 279, 66 Stat. 230.)

CROSS REFERENCES

Jurisdiction of all offenses against the laws of the United States, see section 3231 of Title 18, Crimes and Criminal Procedure.

United States defined, see section 1101 of this title.

§ 1330. Collection of penalties and expenses

(a) Notwithstanding any other provisions of this subchapter, the withholding or denial of clearance of or a lien upon any vessel or aircraft provided for in section 1221, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1321, 1322, or 1323 of this title shall not be regarded as the sole and exclusive means or remedy for the enforcement of payments of any fine, penalty or expenses imposed or incurred under such sections, but, in the discretion of the Attorney General, the amount thereof may be recovered by civil suit, in the name of the United States, from any person made liable under any of such sections.

(b) Notwithstanding section 3302 of title 31, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 shall be credited to the appropriation—

(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this subchapter, including—

(A) the identification, investigation, and apprehension of criminal aliens,

(B) the implementation of the system described in section 1252(a)(3)(A) of this title, and

(C) for the repair, maintenance, or construction on the United States border, in

areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and

(2) for the Executive Office for Immigration Review in the Department of Justice for the purpose of removing the backlogs in the preparation of transcripts of deportation proceedings conducted under section 1252 of this title.

(June 27, 1952, ch. 477, title II, ch. 8, § 280, 66 Stat. 230; Nov. 29, 1990, Pub. L. 101–649, title V, § 542(a), 104 Stat. 5057; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(s), 108 Stat. 4317.)

REFERENCES IN TEXT

Sections 203(b), 543(a), and 544 of the Immigration Act of 1990, referred to in subsec. (b), are sections 203(b), 543(a), and 544 of Pub. L. 101–649. Section 203(b) of the Act amended section 1281 of this title. Section 543(a) of the Act amended sections 1221, 1227, 1229, 1284, 1285, 1286, 1287, 1321, 1322, and 1323 of this title. Section 544 of the Act enacted section 1324c of this title and amended section 1251 of this title.

AMENDMENTS

1994—Subsec. (b)(1)(C). Pub. L. 103–416 substituted ''maintenance'' for ''maintainance''.

1990—Pub. L. 101–649 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 542(b) of Pub. L. 101–649 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fines and penalties collected on or after January 1, 1991.''

CROSS REFERENCES

Definition of Attorney General and United States, see section 1101 of this title.

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided,* That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

(June 27, 1952, ch. 477, title II, ch. 9, § 281, 66 Stat. 230; Oct. 3, 1965, Pub. L. 89–236, § 14, 79 Stat. 919; Oct. 21, 1968, Pub. L. 90–609, § 1, 82 Stat. 1199.)

REFERENCES IN TEXT

The Headquarters Agreement, referred to in text, is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1968—Pub. L. 90–609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89–236, § 14(a), (b), designated opening provision beginning ''The following fees shall be charged:'' and ending with the end of par. (7) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1155(b) of this title in par. (6).

Subsec. (b). Pub. L. 89–236, § 14(c), added subsec. (b).

Subsec. (c). Pub. L. 89–236, § 14(d), designated closing provision consisting of the paragraph beginning ''The fees for the furnishing'' as subsec. (c).

EFFECTIVE DATE OF 1965 AMENDMENT

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

SURCHARGE FOR PROCESSING MACHINE READABLE NONIMMIGRANT VISAS

Pub. L. 103–236, title I, § 140(a), Apr. 30, 1994, 108 Stat. 399, as amended by Pub. L. 103–415, § 1(bb), Oct. 25, 1994, 108 Stat. 4302, provided that:

''(1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

''(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

''(3) For fiscal years 1994 and 1995, fees deposited under the authority of paragraph (2) may not exceed a total of $107,500,000. For subsequent fiscal years, fees may be collected under the authority of paragraph (1) only in such amounts as shall be prescribed in subsequent authorization Acts.

''(4) The provisions of the Act of August 18, 1856 (Revised Statutes 1726–28; 22 U.S.C. 4212–14), concerning accounting for consular fees shall not apply to fees collected under this subsection.

''(5) No fee or surcharge authorized under paragraph (1) may be charged to a citizen of a country that is a signatory as of the date of enactment of this Act [Apr. 30, 1994] to the North American Free Trade Agreement, except that the Secretary of State may charge such fee or surcharge to a citizen of such a country if the Secretary determines that such country charges a visa application or issuance fee to citizens of the United States.''

AGREEMENTS ON PASSPORT VISA FEES

The United States has various bilateral agreements reciprocally waiving or reducing passport fees for nonimmigrants from foreign countries.

Country	Date signed	Entered into force	Citation
Albania	May 7, 1926	June 1, 1926	
Argentina ...	April 15, 1942 ...	June 1, 1942	56 Stat. 1578.
Australia	Feb. 10, 1950	Feb. 10, 1950	1 UST 457.
	July 29, Aug. 9, 17, 20, 1955.	Aug. 20, 1955 ...	6 UST 6225.
	Mar. 13, June 1, Aug. 19, 1959.	Aug. 19, 1959 ...	11 UST 2049.
Austria	June 10, 28, July 12, 1949.	July 12, 1949	63 Stat. 2740.
Bahamas	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Barbados	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Belgium	May 3, 23, 1962	May 23, 1962	13 UST 1246.
	Mar. 9, Apr. 20, 1971.	.....	22 UST 678.

Country	Date signed	Entered into force	Citation
Brazil	Dec. 16, 17, 1937	Jan. 1, 1938	186 LNTS 413.
	May 26, 1965	July 25, 1965	16 UST 1006.
Chile	Aug. 29, 1950	Sept. 1, 1950	1 UST 719.
China	Jan. 7, 1981	Jan. 7, 1981	32 UST 4533.
	Dec. 2, 1985	Jan. 2, 1986	TIAS.
	Apr. 14, 1993	May 14, 1993	
Colombia	June 13, 26, 1956, May 22, 1957.	June 21, 1957	10 UST 1250.
	June 5, 11, 1957	.....	10 UST 1250.
Congo (Brazzaville).	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Costa Rica	June 29, 1925	July 25, 1925	
Cyprus	July 11, 1962, Jan. 11, 1963.	Jan. 11, 1963	14 UST 6.
Czech Republic.	Dec. 18, 21, 1962	Dec. 21, 1962	13 UST 3842.
	June 20, 1978	June 20, 1978	30 UST 1593.
Denmark	July 2, Sept. 29, 1925.	Aug. 6, 1925	
	June 9, 21, July 7, 8, 1947.	July 8, 1947	62 Stat. 4068.
	Apr. 30, May 1, 1958.	.....	
Dominican Republic.	Dec. 14, 16, 1955	Feb. 1, 1956	7 UST 135.
Ecuador	Dec. 11, 1962, Jan 7, 1963.	Jan. 7, 1963	14 UST 757.
Egypt	June 3, Aug. 1, 1963.	Aug. 1, 1963	14 UST 1191.
El Salvador	Dec. 7, 15, 1953	Jan. 14, 1954	5 UST 859.
Estonia	Apr. 8, July 28, 1925.	July 28, 1925	
Fiji	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Finland	July 7, Aug. 26, Dec. 14, 1955.	Dec. 14, 1955	9 UST 1175.
	Feb. 15, 20, 1956	.....	9 UST 1179.
	Aug. 15, 1958	Aug. 15, 1958	9 UST 1183.
France	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
	Sept. 1, 21, 1961	Sept. 21, 1961	12 UST 3197.
Germany	Dec. 12, 30, 1952, Jan. 9, 1953.	Feb. 1, 1953	4 UST 126.
Greece	Jan. 7, 29, 1949	Jan 29, 1949	63 Stat. 2905.
Grenada	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Guatemala	May 30, 1956	May 30, 1956	7 UST 1075.
Guyana	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
	May 20, July 18, 1970.	Jan. 18, 1971	22 UST 233.
Honduras	May 20, 27, 1925	June 1, 1925	
Hungary	Mar. 29, Apr. 7, 1976.	Apr. 7, 1976	28 UST 1311.
	Feb. 10, 1978	Apr. 11, 1978	30 UST 248.
	Feb. 10, 1978	Apr. 11, 1978	30 UST 255.
Iceland	Nov. 3, Dec. 21, 1925, June 11, 19, 21, 1926.	June 21, 1926	
	June 4, 1956	June 4, 1956	7 UST 1017.
India	July 19, Aug. 11, 1948.	Aug. 11, 1948	5 UST 193.
Iran	Mar. 27, Apr. 20, 21, 1926.	Apr. 21, 1926	
	Dec. 13, 16, 1976	Dec. 16, 1976	28 UST 8161.
Iraq	Feb. 27, 1939	Feb. 27, 1939	
	June 6, 1956	June 6, 1956	7 UST 1067.
Ireland	Aug. 1, 1949	Aug. 1, 1949	63 Stat. 2807.
Israel	Mar. 27, June 1, 1951.	June 1, 1951	3 UST 4796.
	Feb. 14, 28, Mar. 2, 1955.	Mar. 2, 1955	7 UST 2125.
Italy	Feb. 11, 21, 26, 1929.	Mar. 1, 1929	
	Sept. 28, 29, 1948.	Sept. 29, 1948	62 Stat. 3480.
Jamaica	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Japan	May 21, Aug. 12, 26, Sept. 18, 1952.	Sept. 18, 1952	5 UST 363.
	Aug. 9, 23, 1966	Sept. 22, 1966	17 UST 1228.
Kiribati	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Korea	Mar. 28, 1968	Apr. 27, 1968	19 UST 4789.
Kuwait	Dec. 11, 27, 1960	Dec. 27, 1960	11 UST 2650.
Latvia	Feb. 18, Mar. 27, 1935.	Mar. 27, 1935.	
Lesotho	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Liberia	Aug. 31, 1925	Aug. 31, 1925	
	Oct. 27, 28, 1947	Oct. 28, 1947	62 Stat. 3930.
Liechtenstein.	Apr. 22, June 18, 30, 1926.	June 30, 1926	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Lithuania	Apr. 17, 1937	Apr. 17, 1937	
Luxembourg	Apr. 25, May 22, 26, 1936.	May 26, 1936	
Madagascar	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Malaysia	Oct. 15, 22, 1954	.....	
	Mar. 5, 12, 1958	.....	
Malta	Oct. 31, Dec. 12, 1949.	Dec. 12, 1949	64 Stat. B137.
Mexico	Oct. 28, Nov. 10, 12, 1953.	Nov. 12, 1953	5 UST 174.
	May 29, 1974	.....	25 UST 1172.
Monaco	Mar. 31, 1952	Mar. 31, 1952	3 UST 3942.
Mongolia	Aug. 2, 1990	Aug. 2, 1990	TIAS.
Morocco	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Netherlands	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
	July 30, Aug. 20, 1947.	Aug. 20, 1947	61 Stat. 3838.
New Zealand.	Mar. 14, 1949	Mar. 14, 1949	63 Stat. 2538.
	Dec. 16, 1957, May 2, 5, 1958.	May 5, 1958	9 UST 913.
	May 13, 1958	.....	9 UST 919.
Nicaragua	July 6, Sept. 30, Oct. 22, 1955.	Oct. 22, 1955	10 UST 1696.
Norway	July 7, 29, 1947	July 29, 1947	61 Stat. 3101.
	Apr. 25, 1958	.....	
	Sept. 10, Oct. 19, 1948.	Oct. 19, 1948	62 Stat. 3649.
Pakistan	Oct. 10, 18, 1949	Oct. 18, 1949	3 UST 365.
	Aug. 16, Oct. 11, Nov. 19, Dec. 16, 29, 1952, Mar. 19, Apr. 8, 1953.	.....	4 UST 11.
	Aug. 4, Oct. 20, Nov. 25, 29, 1955.	.....	6 UST 6107.
	Mar. 16, June 27, 1959.	June 27, 1959	12 UST 1685.
Panama	Mar. 27, May 22, 25, 1956.	June 1, 1956	7 UST 905.
	June 14, 17, 1971.	June 17, 1971	22 UST 815.
Peru	Apr. 6, Sept. 26, Oct. 9, 1956.	Sept. 26, 1956	8 UST 468.
	Jan. 4, 7, 1957	.....	8 UST 468.
	Mar. 18, Apr. 23, 1970.	Apr. 23, 1970	21 UST 1317.
Philippines	Nov. 24, 1952	Nov. 24, 1952	3 UST 5196.
Poland	Dec. 17, 1962, Jan 21, 1963.	Jan. 21, 1963	14 UST 118.
Portugal	June 7, 1983	July 7, 1983	TIAS 10723.
Romania	Apr. 20, May 14, 26, 1962.	May 26, 1962	13 UST 1192.
	May 31, June 17, 1967.	.....	18 UST 1266.
	Sept. 12, Oct. 10, 1977.	Oct. 10, 1977	29 UST 4705.
Saint Lucia	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Singapore	Oct. 15, 22, 1954	.....	
	Mar. 5, 12, 1958	.....	
Slovac Republic.	Dec. 18, 21, 1962	Dec. 21, 1962	13 UST 3842.
	June 20, 1978	June 20, 1978	30 UST 1593.
South Africa	Mar. 28, Apr. 3, 1956.	May 1, 1956	7 UST 631.
	Mar. 31, 1958	.....	9 UST 1023.
Spain	Jan. 21, 1952	Jan. 21, 1952	3 UST 2927.
	May 11, July 5, 1963.	.....	14 UST 1206.
Sri Lanka (Ceylon).	Aug. 25, Sept. 7, 1956.	Sept. 7, 1956	8 UST 83.
Surinam	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
Sweden	Apr. 10, 30, 1947	Apr. 30, 1947	61 Stat. 4050.
Switzerland	May 11, 1925	May 11, 1925	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Thailand	Sept. 19, 1925	Sept. 19, 1925	
Tonga	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Trinidad and Tobago.	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
	Oct. 28, Nov. 12, 1969.	Nov. 12, 1969	21 UST 1995.
Tunisia	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Turkey	June 27, Aug. 8, Sept. 27, Oct. 11, 1955.	Oct. 11, 1955	7 UST 337.
Tuvalu	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Union of Soviet Socialist Republics[1].	Mar. 26, Aug. 11, 20, 1958.	Aug. 20, 1958	9 UST 1413.
	Sept. 29, 1975	Sept. 29, 1975	27 UST 4258.
	July 30, 1984	July 30, 1984	TIAS.
	Oct. 31, 1986	Oct. 31, 1986	TIAS.
United Kingdom.	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Uruguay	Nov. 3, 8, 1949	Nov. 10, 1949	64 Stat. B128.
Venezuela	Jan. 5, 12, 1937	Jan. 12, 1937	
Yugoslavia[1]	Dec. 24, 29, 1925	Feb. 1, 1926	
	Mar. 23, 25, 1950.	Mar. 25, 1950	1 UST 471.

Country	Date signed	Entered into force	Citation
	Dec. 30, 1963, Mar. 27, Apr. 4, 1964.	Apr. 15, 1964	15 UST 355.
China (Taiwan[2]).	Dec. 20, 1955, Feb. 20, 1956.	Feb. 20, 1956	7 UST 585.
	July 11, Oct. 17, Dec. 7, 1956.	.....	18 UST 3167.
	May 8, June 9, 15, 1970.	.....	21 UST 2213.

[1] For successor states inquire of the Treaty Office of the United States Department of State.

[2] These agreements are administered on a nongovernmental basis by the American Institute in Taiwan pursuant to 22 U.S.C. 3305, as a result of the termination of relations with the governing authorities on Taiwan on Jan. 1, 1979.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Entry, see section 1101(a)(13) of this title.
Immigrant visa, see section 1101(a)(16) of this title.
National, see section 1101(a)(21) of this title.
National of the United States, see section 1101(a)(22) of this title.
Nonimmigrant alien, see section 1101(a)(15) of this title.
Nonimmigrant visa, see section 1101(a)(26) of this title.
Residence, see section 1101(a)(33) of this title.
Service, see section 1101(a)(34) of this title.
Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1356 of this title.

§ 1352. Printing of reentry permits and blank forms of manifest and crew lists; sale to public

(a) Reentry permits issued under section 1203 of this title shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed by the Attorney General.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Documents, upon prepayment, copies of blank forms of manifests and crew lists and such other forms as may be prescribed and authorized by the Attorney General to be sold pursuant to the provisions of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 282, 66 Stat. 231.)

CROSS REFERENCES

Definition of Attorney General, see section 1101 of this title.

§ 1353. Travel expenses and expense of transporting remains of officers and employees dying outside of United States

When officers, inspectors, or other employees of the Service are ordered to perform duties in a foreign country, or are transferred from one station to another, in the United States or in a foreign country, or while performing duties in any foreign country become eligible for voluntary retirement and return to the United States, they shall be allowed their traveling expenses in accordance with such regulations as the Attorney General may deem advisable, and they may also be allowed, within the discretion and under written orders of the Attorney General, the expenses incurred for the transfer of their wives and dependent children, their household effects and other personal property, including the expenses for packing, crating, freight, unpacking, temporary storage, and drayage thereof in accordance with subchapter II of chapter 57 of title 5. The expense of transporting the remains of such officers, inspectors, or other employees who die while in, or in transit to, a foreign country in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses of such interment and of preparation for shipment, are authorized to be paid on the written order of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 9, § 283, 66 Stat. 231; Oct. 24, 1988, Pub. L. 100–525, § 9(p), 102 Stat. 2621.)

AMENDMENTS

1988—Pub. L. 100–525 substituted ''subchapter II of chapter 57 of title 5'' for ''the Act of August 2, 1946 (60 Stat. 806; 5 U.S.C., sec. 73b–1)''.

CROSS REFERENCES

Definition of Attorney General, Service, and United States, see section 1101 of this title.

§ 1353a. Officers and employees; overtime services; extra compensation; length of working day

The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian) and two additional days' pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed.

(Mar. 2, 1931, ch. 368, § 1, 46 Stat. 1467; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; June 27, 1952, ch. 477, title IV, § 402(i)(1), 66 Stat. 278.)

CODIFICATION

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

Ex. Ord. No. 6166, is authority for the substitution of ''Immigration and Naturalization Service'' for ''Immigration Service''; and 1940 Reorg. Plan No. V. is author-

ity for the substitution of ''Attorney General'' for ''Secretary of Labor.'' See note set out under section 1551 of this title.

Section was formerly classified to section 342c of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109a of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted ''immigration officers'' for ''inspectors''.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Payment of overtime services or for Sunday or holiday work under this section not prevented by generally applicable premium pay provisions covering government employees, see section 5549 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1353a, 1353d of this title; title 5 section 5549.

§ 1353b. Extra compensation; payment

The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance arriving in the United States from a foreign port to the Attorney General, who shall pay the same to the several immigration officers and employees entitled thereto as provided in this section and section 1353a of this title. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual inspection or examination of passengers or crew takes place or not: *Provided*, That this section shall not apply to the inspection at designated ports of entry of passengers arriving by international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the Great Lakes and connecting waterways, when operating on regular schedules.

(Mar. 2, 1931, ch. 368, § 2, 46 Stat. 1467; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238.)

CODIFICATION

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

1940 Reorg. Plan No. V is authority for the substitution of ''Attorney General'' for ''Secretary of Labor.'' See note set out under section 1551 of this title.

Section was formerly classified to section 342d of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109b of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Maximum charges for inspection and quarantine overtime services, see section 80503 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1353d, 1356 of this title; title 5 section 5549.

§ 1353c. Immigration officials; service in foreign contiguous territory

Nothing in section 209 of title 18 relative to augmenting salaries of Government officials from outside sources shall prevent receiving reimbursements for services of immigration officials incident to the inspection of aliens in foreign contiguous territory and such reimbursement shall be credited to the appropriation, ''Immigration and Naturalization Service—Salaries and Expenses.''

(Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1424; Sept. 3, 1954, ch. 1263, § 6, 68 Stat. 1227.)

CODIFICATION

''Section 209 of title 18'' substituted in text for ''section 1914 of title 18'' on authority of section 2 of Pub. L. 87–849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 281 of Title 18, Crimes and Criminal Procedure.

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

Section constituted a part of section 1 of act Mar. 4, 1921, ch. 161, 41 Stat. 1424, which rendered act Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1106 (section 66 of former Title 5), inapplicable to immigration officials under the circumstances stated.

Section was formerly classified to section 68 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109c of this title.

AMENDMENTS

1954—Act Sept. 3, 1954, amended section generally, substituting ''section 1914 of title 18'' for reference to the proviso in the Act of March 3, 1917 (5 U.S.C. 66), and substituting ''Immigration and Naturalization Service—Salaries and Expenses'' for ''Expenses of regulating immigration''.

§ 1353d. Disposition of money received as extra compensation

Moneys collected on or after July 1, 1941, as extra compensation for overtime service of immigration officers and employees of the Immigration Service pursuant to sections 1353a and 1353b of this title, shall be deposited in the Treasury of the United States to the credit of the appropriation for the payment of salaries, field personnel of the Immigration and Naturalization Service, and the appropriation so

credited shall be available for the payment of such compensation.

(Aug. 22, 1940, ch. 688, 54 Stat. 858; June 27, 1952, ch. 477, title IV, § 402(i)(2), 66 Stat. 278.)

CODIFICATION

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

Section was formerly classified to section 342e of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109d of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted ''immigration officers'' for ''inspectors''.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

§ 1354. Applicability to members of the Armed Forces

Nothing contained in this subchapter shall be construed so as to limit, restrict, deny, or affect the coming into or departure from the United States of an alien member of the Armed Forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces: *Provided*, That nothing contained in this section shall be construed to give to or confer upon any such alien any other privileges, rights, benefits, exemptions, or immunities under this chapter, which are not otherwise specifically granted by this chapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 284, 66 Stat. 232.)

CROSS REFERENCES

Definition of alien and United States, see section 1101 of this title.

§ 1355. Disposal of privileges at immigrant stations; rentals; retail sale; disposition of receipts

(a) Subject to such conditions and limitations as the Attorney General shall prescribe, all exclusive privileges of exchanging money, transporting passengers or baggage, keeping eating houses, or other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder (other than an alien) in accordance with the provision of section 5 of title 41 and for the use of Government property in connection with the exercise of such exclusive privileges a reasonable rental may be charged. The feeding of aliens, or the furnishing of any other necessary service in connection with any United States immigrant station, may be performed by the Service without regard to the foregoing provisions of this subsection if the Attorney General shall find that it would be advantageous to the Government in terms of economy and efficiency. No intoxicating liquors shall be sold at any immigrant station.

(b) Such articles determined by the Attorney General to be necessary to the health and welfare of aliens detained at any immigrant station, when not otherwise readily procurable by such aliens, may be sold at reasonable prices to such aliens through Government canteens operated by the Service, under such conditions and limitations as the Attorney General shall prescribe.

(c) All rentals or other receipts accruing from the disposal of privileges, and all moneys arising from the sale of articles through Service-operated canteens, authorized by this section, shall be covered into the Treasury to the credit of the appropriation for the enforcement of this subchapter.

(June 27, 1952, ch. 477, title II, ch. 9, § 285, 66 Stat. 232.)

CROSS REFERENCES

Definition of alien, Attorney General, Service, and United States, see section 1101 of this title.

§ 1356. Disposition of moneys collected under the provisions of this subchapter

(a) Detention, transportation, hospitalization, and all other expenses of detained aliens; expenses of landing stations

All moneys paid into the Treasury to reimburse the Service for detention, transportation, hospitalization, and all other expenses of detained aliens paid from the appropriation for the enforcement of this chapter, and all moneys paid into the Treasury to reimburse the Service for expenses of landing stations referred to in section 1228(b) of this title paid by the Service from the appropriation for the enforcement of this chapter, shall be credited to the appropriation for the enforcement of this chapter for the fiscal year in which the expenses were incurred.

(b) Purchase of evidence

Moneys expended from appropriations for the Service for the purchase of evidence and subsequently recovered shall be reimbursed to the current appropriation for the Service.

(c) Fees and administrative fines and penalties; exception

Except as otherwise provided in subsection (a) and subsection (b) of this section, or in any other provision of this subchapter, all moneys received in payment of fees and administrative fines and penalties under this subchapter shall be covered into the Treasury as miscellaneous receipts: *Provided, however*, That all fees received from applicants residing in the Virgin Islands of the United States, and in Guam, required to be paid under section 1351 of this title, shall be paid over to the Treasury of the Virgin Islands and to the Treasury of Guam, respectively.

(d) Schedule of fees

In addition to any other fee authorized by law, the Attorney General shall charge and collect $6

per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside of the United States prior to such arrival, aboard a commercial aircraft or commercial vessel.

(e) Limitations on fees

(1) No fee shall be charged under subsection (d) of this section for immigration inspection or preinspection provided in connection with the arrival of any passenger, other than aircraft passengers, whose journey originated in the following:

(A) Canada,

(B) Mexico,

(C) a territory or possession of the United States, or

(D) any adjacent island (within the meaning of section 1101(b)(5) of this title).

(2) No fee may be charged under subsection (d) of this section with respect to the arrival of any passenger—

(A) who is in transit to a destination outside the United States, and

(B) for whom immigration inspection services are not provided.

(f) Collection

(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the United States shall—

(A) collect from that individual the fee charged under subsection (d) of this section at the time the document or ticket is issued; and

(B) identify on that document or ticket the fee charged under subsection (d) of this section as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the United States is issued in a foreign country; and

(B) the fee charged under subsection (d) of this section is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Attorney General at any time before the date that is thirty-one days after the close of the calendar quarter in which the fees are collected, except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment. Regulations issued by the Attorney General under this subsection with respect to the collection of the fees charged under subsection (d) of this section and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(g) Provision of immigration inspection and preinspection services

Notwithstanding section 1353b of this title, or any other provision of law, the immigration services required to be provided to passengers upon arrival in the United States on scheduled airline flights shall be adequately provided, within forty-five minutes of their presentation for inspection, when needed and at no cost (other than the fees imposed under subsection (d) of this section) to airlines and airline passengers at:

(1) immigration serviced airports, and

(2) places located outside of the United States at which an immigration officer is stationed for the purpose of providing such immigration services.

(h) Disposition of receipts

(1)(A) There is established in the general fund of the Treasury a separate account which shall be known as the ''Immigration User Fee Account''. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended. At the end of each 2-year period, beginning with the creation of this account, the Attorney General, following a public rulemaking with opportunity for notice and comment, shall submit a report to the Congress concerning the status of the account, including any balances therein, and recommend any adjustment in the prescribed fee that may be required to ensure that the receipts collected from the fee charged for the succeeding two years equal, as closely as possible, the cost of providing these services.

(B) Notwithstanding any other provisions of law, all civil fines or penalties collected pursuant to sections 1321 and 1323 of this title and all liquidated damages and expenses collected pursuant to this chapter shall be deposited in the Immigration User Fee Account.

(2)(A) The Secretary of the Treasury shall refund out of the Immigration User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General in providing immigration inspection and preinspection services for commercial aircraft or vessels and in—

(i) providing overtime immigration inspection services for commercial aircraft or vessels;

(ii) administration of debt recovery, including the establishment and operation of a national collections office;

(iii) expansion, operation and maintenance of information systems for nonimmigrant control and debt collection;

(iv) detection of fraudulent documents used by passengers traveling to the United States; and[1]

(v) providing detention and deportation services for: excludable aliens arriving on commer-

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

cial aircraft and vessels; and any alien who is excludable under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry.[2]

(vi) providing exclusion and asylum proceedings at air or sea ports-of-entry for: excludable aliens arriving on commercial aircraft and vessels including immigration exclusion proceedings resulting from presentation of fraudulent documents and failure to present documentation; and any alien who is excludable under section 1182(a) of this title who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

(i) Reimbursement

Notwithstanding any other provision of law, the Attorney General is authorized to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the Attorney General in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses of individuals employed by the Attorney General to provide such immigration inspection services). The Attorney General's authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.

(j) Regulations

The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(k) Advisory committee

In accordance with the provisions of the Federal Advisory Committee Act, the Attorney General shall establish an advisory committee, whose membership shall consist of representatives from the airline and other transportation industries who may be subject to any fee or charge authorized by law or proposed by the Immigration and Naturalization Service for the purpose of covering expenses incurred by the Immigration and Naturalization Service. The advisory committee shall meet on a periodic basis and shall advise the Attorney General on issues related to the performance of the inspectional services of the Immigration and Naturalization Service. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

(*l*) Report to Congress

In addition to the reporting requirements established pursuant to subsection (h) of this section, the Attorney General shall prepare and submit annually to the Congress, not later than March 31st of each year, a statement of the financial condition of the ''Immigration User Fee Account'' including beginning account balance, revenues, withdrawals and their purpose, ending balance, projections for the ensuing fiscal year and a full and complete workload analysis showing on a port by port basis the current and projected need for inspectors. The statement shall indicate the success rate of the Immigration and Naturalization Service in meeting the forty-five minute inspection standard and shall provide detailed statistics regarding the number of passengers inspected within the standard, progress that is being made to expand the utilization of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics and the steps being taken to correct any nonconformity.

(m) Immigration Examinations Fee Account

Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled ''Immigration Examinations Fee Account'' in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: *Provided, however*, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

(n) Reimbursement of administrative expenses; transfer of deposits to General Fund of United States Treasury

All deposits into the ''Immigration Examinations Fee Account'' shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the ''Immigration Examinations Fee Account''.

(*o*) Annual financial reports to Congress

The Attorney General shall prepare and submit annually to Congress statements of financial condition of the ''Immigration Examinations Fee Account'', including beginning ac-

[2] So in original. The period probably should be ''; and''.

count balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.

(p) Additional effective dates

The provisions set forth in subsections (m), (n), and (*o*) of this section apply to adjudication and naturalization services performed and to related fees collected on or after October 1, 1988.

(q) Land Border Inspection Fee Account

(1) Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, a project under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such project may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.

(2) All of the fees collected under this subsection shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the Land Border Inspection Fee Account.

(3)(A) The Secretary of the Treasury shall refund, at least on a quarterly basis amounts to any appropriations for expenses incurred in providing inspection services at land border points of entry. Such expenses shall include—

(i) the providing of overtime inspection services;

(ii) the expansion, operation and maintenance of information systems for nonimmigrant control;

(iii) the hire of additional permanent and temporary inspectors;

(iv) the minor construction costs associated with the addition of new traffic lanes (with the concurrence of the General Services Administration);

(v) the detection of fraudulent documents used by passengers travelling to the United States;

(vi) providing for the administration of said account.

(B) The amounts required to be refunded from the Land Border Inspection Fee Account for fiscal years 1992 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 101–162.

(4) The Attorney General will prepare and submit annually to the Congress statements of financial condition of the Land Border Immigration Fee Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year.

(5)(A) The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress.

(B) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in paragraph (1).

(C) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a status report on the land border inspection project.

(r) Breached Bond/Detention Fund

(1) Notwithstanding any other provision of law, there is established in the general fund of the Treasury a separate account which shall be known as the Breached Bond/Detention Fund (in this subsection referred to as the ''Fund'').

(2) There shall be deposited as offsetting receipts into the Fund all breached cash and surety bonds, in excess of $8,000,000, posted under this chapter which are recovered by the Department of Justice.

(3) Such amounts as are deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Immigration and Naturalization Service for the following purposes—

(i) for expenses incurred in the collection of breached bonds, and

(ii) for expenses associated with the detention of illegal aliens.

(4) The amount required to be refunded from Fund[3] for fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: *Provided*, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of Public Law 102–395.

(5) The Attorney General shall prepare and submit annually to the Congress, statements of financial condition of the Fund, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.

(6) For fiscal year 1993 only, the Attorney General may transfer up to $1,000,000 from the Immigration User Fee Account to Fund[3] for initial expenses necessary to enhance collection efforts: *Provided*, That any such transfers shall be refunded from Fund[3] back to the Immigration User Fee Account by December 31, 1993.

(June 27, 1952, ch. 477, title II, ch. 9, § 286, 66 Stat. 232; Dec. 29, 1981, Pub. L. 97–116, § 13, 95 Stat. 1618; Oct. 18, 1986, Pub. L. 99–500, § 101(b) [title II, § 205(a), formerly § 205], 100 Stat. 1783–39, 1783–53, renumbered § 205(a), Oct. 24, 1988, Pub. L. 100–525, § 4(a)(2)(A), 102 Stat. 2615; Oct. 30, 1986, Pub. L. 99–591, § 101(b) [title II, § 205], 100 Stat. 3341–39, 3341–53; Nov. 14, 1986, Pub. L. 99–653, § 7(d)(1), as added Oct. 24, 1988, Pub. L. 100–525, § 8(f), 102 Stat. 2617; July 11, 1987, Pub. L. 100–71, title I, § 1, 101 Stat. 394; Oct. 1, 1988, Pub. L. 100–459, title II, § 209(a), 102 Stat. 2203; Oct. 24, 1988, Pub. L. 100–525, § 4(a)(1), (d), 102 Stat. 2614, 2615; Nov. 21, 1989, Pub. L. 101–162, title II, 103 Stat. 1000; Nov. 5, 1990, Pub. L. 101–515, title II, § 210(a), (d), 104 Stat. 2120, 2121; Dec. 12, 1991, Pub. L. 102–232,

[3] So in original. Probably should be preceded by ''the''.

title III, § 309(a)(1)(A)(i), (B), (2), (b)(12), 105 Stat. 1757–1759; Oct. 6, 1992, Pub. L. 102–395, title I, § 112, 106 Stat. 1843; Oct. 27, 1993, Pub. L. 103–121, title I, 107 Stat. 1161; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(t), 108 Stat. 4317.)

REFERENCES IN TEXT

Subchapter C of chapter 33 of title 26, referred to in subsec. (f)(3), is classified to section 4261 et seq. of Title 26, Internal Revenue Code.

The Federal Advisory Committee Act, referred to in subsec. (k), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 606 of Public Law 101–162, referred to in subsec. (q)(3)(B), is section 606 of Pub. L. 101–162, title VI, Nov. 21, 1989, 103 Stat. 1031, which is not classified to the Code.

Section 606 of Public Law 102–395, referred to in subsec. (r)(4), is section 606 of Pub. L. 102–395, 106 Stat. 1873, which is not classified to the Code.

AMENDMENTS

1994—Subsec. (r). Pub. L. 103–416, § 219(t)(1), substituted ''Fund'' for ''Account'' in heading.

Subsec. (r)(1). Pub. L. 103–416, § 219(t)(2), substituted ''(in this subsection referred to as the 'Fund')'' for ''(hereafter referred to as the Fund)''.

Subsec. (r)(2). Pub. L. 103–416, § 219(t)(3), made technical amendment to reference to this chapter involving corresponding provision of original act.

Subsec. (r)(4). Pub. L. 103–416, § 219(t)(4), struck out ''the Breached Bond/Detention'' before ''Fund''.

Pub. L. 103–416, § 219(t)(5), substituted ''of Public Law 102–395'' for ''of this Act''.

Subsec. (r)(5). Pub. L. 103–416, § 219(t)(6), substituted ''Fund'' for ''account'' after ''condition of the''.

Subsec. (r)(6). Pub. L. 103–416, § 219(t)(4), struck out ''the Breached Bond/Detention'' before ''Fund'' in two places.

1993—Subsec. (d). Pub. L. 103–121 substituted ''$6'' for ''$5''.

Subsec. (h)(2)(A)(v), (vi). Pub. L. 103–121, which directed the amendment of subpar. (A) by ''deleting subsection (v)'' and adding new cls. (v) and (vi), was executed by adding cls. (v) and (vi) and striking out former cl. (v) which read as follows: ''providing detention and deportation services for excludable aliens arriving on commercial aircraft and vessels.'', to reflect the probable intent of Congress.

1992—Subsec. (r). Pub. L. 102–395 added subsec. (r).

1991—Subsec. (e)(1)(D). Pub. L. 102–232, § 309(b)(12), made an amendment to reference to section 1101(b)(5) of this title involving corresponding provision of original act.

Subsec. (f)(3). Pub. L. 102–232, § 309(a)(2)(B), made technical correction to directory language of Pub. L. 101–515, § 210(a)(2). See 1990 Amendment note below.

Subsec. (h)(1)(A). Pub. L. 102–232, § 309(a)(2)(A)(i), inserted a period after ''available until expended''.

Subsec. (m). Pub. L. 102–232, § 309(a)(2)(A)(ii), substituted ''additional'' for ''additonal''.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (n). Pub. L. 102–232, § 309(a)(1)(B), amended directory language of Pub. L. 101–162. See 1989 Amendment note below.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (*o*). Pub. L. 102–232, § 309(a)(1)(A)(i)(II), substituted ''shall'' for ''will''.

Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (p). Pub. L. 102–232, § 309(a)(1)(A)(i)(I), made technical correction to directory language of Pub. L. 100–459. See 1988 Amendment note below.

Subsec. (q)(2). Pub. L. 102–232, § 309(a)(2)(A)(iii), realigned margin.

Subsec. (q)(3)(A). Pub. L. 102–232, § 309(a)(2)(A)(iii), (iv), inserted ''the'' after ''The Secretary of'' and realigned margin.

Subsec. (q)(5)(B). Pub. L. 102–232, § 309(a)(2)(A)(v), substituted ''paragraph (1)'' for ''subsection (q)(1)''.

1990—Subsec. (e)(1). Pub. L. 101–515, § 210(a)(1), inserted '', other than aircraft passengers,'' after ''arrival of any passenger''.

Subsec. (f)(3). Pub. L. 101–515, § 210(a)(2), as amended by Pub. L. 102–232, § 309(a)(2)(B), inserted '', except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment'' after ''in which the fees are collected''.

Subsec. (g). Pub. L. 101–515, § 210(a)(3), inserted '', within forty-five minutes of their presentation for inspection,'' before ''when needed and''.

Subsec. (h)(1)(A). Pub. L. 101–515, § 210(a)(4), substituted ''There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration User Fee Account'. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended'' for ''All of the fees collected under subsection (d) of this section shall be deposited in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the 'Immigration User Fee Account'.''

Subsec. (*l*). Pub. L. 101–515, § 210(a)(5), added subsec. (*l*).

Subsec. (m). Pub. L. 101–515, § 210(d)(1), (2), inserted ''as offsetting receipts'' after ''shall be deposited'' and inserted before period at end '': *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additonal [sic] costs associated with the administration of the fees collected''.

Subsec. (q). Pub. L. 101–515, § 210(d)(3), added subsec. (q).

1989—Subsec. (n). Pub. L. 101–162, as amended by Pub. L. 102–232, § 309(a)(1)(B), struck out ''in excess of $50,000,000'' before ''shall remain available'' and struck out after first sentence ''At least annually, deposits in the amount of $50,000,000 shall be transferred from the 'Immigration Examinations Fee Account' to the General Fund of the Treasury of the United States.''

1988—Subsec. (a). Pub. L. 100–525, § 8(f), added Pub. L. 99–653, § 7(d)(1). See 1986 Amendment note below.

Subsecs. (d) to (*l*). Pub. L. 100–525, § 4(a)(2)(A), (d), amended Pub. L. 99–500 and Pub. L. 99–591. See 1986 Amendment note below.

Subsec. (f)(3). Pub. L. 100–525, § 4(a)(1)(A), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (g). Pub. L. 100–525, § 4(a)(1)(B), substituted ''section 1353b of this title'' for ''section 1353(a) of this title''.

Subsec. (h)(1)(A). Pub. L. 100–525, § 4(a)(1)(C)(i), amended that portion of the first sentence of subpar. (A) following ''Treasury of the United States'' so as to read '', to remain available until expended''. See 1987 Amendment note below.

Pub. L. 100–525, § 4(a)(1)(C)(ii), substituted ''Fee Account'.'' for ''Fee Account.'''

Subsec. (h)(1)(B). Pub. L. 100–525, § 4(a)(1)(C)(iii)–(v), substituted ''civil fines or penalties'' for ''fines, penalties, liquidated damages or expenses'', inserted ''and all liquidated damages and expenses collected pursuant

to this chapter'' after ''this title'', and struck out quotation marks before and after the term ''Immigration User Fee Account''.

Subsec. (h)(2)(A). Pub. L. 100–525, § 4(a)(1)(C)(vi), substituted ''vessels and in—'' for ''vessels and:'' in introductory provisions and inserted ''and'' at end of cl. (iv).

Subsec. (i). Pub. L. 100–525, § 4(a)(1)(D), inserted ''Reimbursement'' as heading.

Subsec. (*l*). Pub. L. 100–525, § 4(a)(1)(E), struck out subsec. (*l*) which read as follows:

''(1) The provisions of this section and the amendments made by this section, shall apply with respect to immigration inspection services rendered after November 30, 1986.

''(2) Fees may be charged under subsection (d) of this section only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.''

Subsecs. (m) to (p). Pub. L. 100–459, as amended by Pub. L. 102–232, § 309(a)(1)(A)(i)(I), added subsecs. (m) to (p).

1987—Subsec. (h)(1)(A). Pub. L. 100–71, directed the general amendment of first sentence of section 205(h)(1)(A) of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1987, in Pub. L. 99–500 and Pub. L. 99–591. Section 205 of such act does not contain a subsec. (h)(1)(A) but did enact subsec. (h)(1)(A) of this section and had such amendment been executed to first sentence of subsec. (h)(1)(A) of this section it would have resulted in inserting '', to remain available until expended'' after ''Treasury of the United States''. See 1988 Amendment note above.

1986—Subsec. (a). Pub. L. 99–653, § 7(d)(1), as added by Pub. L. 100–525, § 8(f), substituted ''section 1228(b) of this title'' for ''section 1228(c) of this title''.

Subsecs. (d) to (*l*). Pub. L. 99–500, § 101(b) [title II, § 205(a), formerly § 205], as redesignated by Pub. L. 100–525, § 4(a)(2)(A), added subsecs. (d) to (*l*).

Pub. L. 99–591, § 101(b) [title II, § 205], a corrected version of Pub. L. 99–500, § 101(b) [title II, § 205(a)], was repealed by Pub. L. 100–525, § 4(d), effective as of Oct. 30, 1986.

1981—Subsecs. (b), (c). Pub. L. 97–116 added subsec. (b), redesignated former subsec. (b) as (c), and inserted ''and subsection (b)'' after ''subsection (a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(t) of Pub. L. 103–416 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 102–395.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 309(a)(3) of Pub. L. 102–232, as amended by Pub. L. 103–416, title II, § 219(z)(6), Oct. 25, 1994, 108 Stat. 4318, provided that: ''The amendments made by paragraphs (1)(A) [amending this section and section 1455 of this title] and (1)(B) [amending this section] shall be effective as if they were included in the enactment of the Department of Justice Appropriations Act, 1989 [Pub. L. 100–459, title II] and the Department of Justice Appropriations Act, 1990 [Pub. L. 101–162, title II], respectively.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 210(b) of Pub. L. 101–515 provided that: ''The amendment made by subsection (a)(1) of this section [amending this section] shall apply to fees charged only with respect to immigration inspection or preinspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 4(a)(1), (2)(A) of Pub. L. 100–525 effective as if included in enactment of Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Pub. L. 99–500), see section 4(c) of Pub. L. 100–525, set out as a note under section 1227 of this title.

Amendment by section 8(f) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 7(d)(1) of Pub. L. 99–653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99–653, set out as a note under section 1101 of this title.

Pub. L. 99–500, § 101(b) [title II, § 205(b)], as added by Pub. L. 100–525, § 4(a)(2)(B), Oct. 24, 1988, 102 Stat. 2615, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to immigration inspection services rendered after November 30, 1986.

''(2) Fees may be charged under section 286(d) of the Immigration and Nationality Act [8 U.S.C. 1356(d)] only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT

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

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

DEPOSIT OF RECEIPTS FROM INCREASED CHARGE FOR IMMIGRANT VISAS CAUSED BY PROCESSING FINGERPRINTS

Pub. L. 103–317, title V, Aug. 26, 1994, 108 Stat. 1760, provided in part: ''That hereafter all receipts received from an increase in the charge for Immigrant Visas in effect on September 30, 1994, caused by processing an applicant's fingerprints, shall be deposited in this account as an offsetting collection and shall remain available until expended.''

EXTENSION OF LAND BORDER FEE PILOT PROJECT

Title I of Pub. L. 103–121, Oct. 27, 1993, 107 Stat. 1161, as amended by Pub. L. 103–317, title I, § 111, Aug. 26, 1994, 108 Stat. 1736, provided in part: ''That the Land Border Fee Pilot Project scheduled to end September 30, 1993 [see subsec. (q) of this section], is extended to September 30, 1996 for projects on the northern border of the United States and California only.''

CROSS REFERENCES

Definition of alien and Service, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1455 of this title.

§ 1357. Powers of immigration officers and employees

(a) Powers without warrant

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, or expulsion of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and

(5) to make arrests—

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,

if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Administration of oath; taking of evidence

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of title 18.

(c) Search without warrant

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for exclusion from the United States under this chapter which would be disclosed by such search.

(d) Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien,

the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General

shall effectively and expeditiously take custody of the alien.

(e) Restriction on warrantless entry in case of outdoor agricultural operations

Notwithstanding any other provision of this section other than paragraph (3) of subsection (a) of this section, an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(f) Fingerprinting and photographing of certain aliens

(1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 1252 of this title.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

(June 27, 1952, ch. 477, title II, ch. 9, § 287, 66 Stat. 233; Oct. 18, 1976, Pub. L. 94–550, § 7, 90 Stat. 2535; Oct. 27, 1986, Pub. L. 99–570, title I, § 1751(d), 100 Stat. 3207–47; Nov. 6, 1986, Pub. L. 99–603, title I, § 116, 100 Stat. 3384; Oct. 24, 1988, Pub. L. 100–525, §§ 2(e), 5, 102 Stat. 2610, 2615; Nov. 29, 1990, Pub. L. 101–649, title V, § 503(a), (b)(1), 104 Stat. 5048, 5049; Dec. 12, 1991, Pub. L. 102–232, title III, § 306(a)(3), 105 Stat. 1751.)

AMENDMENTS

1991—Subsec. (a)(4). Pub. L. 102–232 substituted a semicolon for comma at end.

1990—Subsec. (a). Pub. L. 101–649, § 503(a), struck out ''and'' at end of par. (3), substituted ''United States, and'' for ''United States. Any such employee shall also have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.'' at end of par. (4), and added par. (5) and concluding provisions.

Subsec. (f). Pub. L. 101–649, § 503(b)(1), added subsec. (f).

1988—Subsec. (d). Pub. L. 100–525, § 5, added par. (3) and closing provisions and struck out former par. (3) which read as follows: ''requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.''

Subsec. (e). Pub. L. 100–525, § 2(e)(2), made technical amendment to directory language of Pub. L. 99–603, § 116, and redesignated the subsec. (d) added by such § 116, as (e). See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–570 added subsec. (d).

Subsec. (e). Pub. L. 99–603, as amended by Pub. L. 100–525, § 2(e), added subsec. (e), which prior to amendment by Pub. L. 100–525, was designated as a second subsec. (d) of this section.

1976—Subsec. (b). Pub. L. 94–550 inserted ''(or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28)'' after ''to whom such oath has been administered'' and ''(or subscribe under penalty of perjury as permitted under section 1746 of title 28)'' after ''give false evidence or swear''.

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Entry, see section 1101(a)(13) of this title.
- Immigration officer, see section 1101(a)(18) of this title.
- Service, see section 1101(a)(34) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1226, 1304 of this title.

§ 1358. Local jurisdiction over immigrant stations

The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations.

(June 27, 1952, ch. 477, title II, ch. 9, § 288, 66 Stat. 234.)

§ 1359. Application to American Indians born in Canada

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

(June 27, 1952, ch. 477, title II, ch. 9, § 289, 66 Stat. 234.)

§ 1360. Establishment of central file; information from other departments and agencies

(a) There shall be established in the office of the Commissioner, for the use of security and enforcement agencies of the Government of the United States, a central index, which shall contain the names of all aliens heretofore admitted to the United States, or excluded therefrom, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted to the United States, or excluded therefrom, the names of their sponsors of record, if any, and such other relevant information as the Attorney General shall require as an aid to the proper enforcement of this chapter.

(b) Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the

Service upon request made by the Attorney General to the head of any such department or agency.

(c) The Secretary of Health and Human Services shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.

(d) A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

(June 27, 1952, ch. 477, title II, ch. 9, § 290, 66 Stat. 234; Oct. 24, 1988, Pub. L. 100–525, § 9(q), 102 Stat. 2621.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–525 substituted ''Secretary of Health and Human Services'' for ''Federal Security Administrator'' and ''The Secretary'' for ''The Administrator''.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Commissioner, see section 1101(a)(8) of this title.
Entry, see section 1101(a)(13) of this title.
Immigration laws, see section 1101(a)(17) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

§ 1361. Burden of proof upon alien

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this chapter, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not subject to exclusion under any provision of this chapter. In any deportation proceeding under Part V of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law.

(June 27, 1952, ch. 477, title II, ch. 9, § 291, 66 Stat. 234; Dec. 29, 1981, Pub. L. 97–116, § 18(k)(1), 95 Stat. 1620.)

AMENDMENTS

1981—Pub. L. 97–116 substituted ''immigrant, special immigrant, immediate relative, or refugee'' for ''quota immigrant, or nonquota immigrant''.

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.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Consular officer, see section 1101(a)(9) of this title.
Entry, see section 1101(a)(13) of this title.
Nonimmigrant alien, see section 1101(a)(15) of this title.
Profession, see section 1101(a)(32) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

§ 1362. Right to counsel

In any exclusion or deportation proceedings before a special inquiry officer and in any appeal proceedings before the Attorney General from any such exclusion or deportation proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

(June 27, 1952, ch. 477, title II, ch. 9, § 292, 66 Stat. 235.)

CROSS REFERENCES

Definition of Attorney General and special inquiry officer, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1252a of this title.

§ 1363. Deposit of and interest on cash received to secure immigration bonds

(a) Cash received by the Attorney General as security on an immigration bond shall be deposited in the Treasury of the United States in trust for the obligor on the bond, and shall bear interest payable at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum. Such interest shall accrue from date of deposit occurring after April 27, 1966, to and including date of withdrawal or date of breach of the immigration bond, whichever occurs first: *Provided,* That cash received by the Attorney General as security on an immigration bond, and deposited by him in the postal savings system prior to discontinuance of the system, shall accrue interest as provided in this section from the date such cash ceased to accrue interest under the system. Appropriations to the Treasury Department for interest on uninvested funds shall be available for payment of said interest.

(b) The interest accruing on cash received by the Attorney General as security on an immigration bond shall be subject to the same disposition as prescribed for the principal cash, except that interest accruing to the date of breach of the immigration bond shall be paid to the obligor on the bond.

(June 27, 1952, ch. 477, title II, ch. 9, § 293, as added July 10, 1970, Pub. L. 91–313, § 2, 84 Stat. 413.)

§ 1364. Triennial comprehensive report on immigration

(a) Triennial report

The President shall transmit to the Congress, not later than January 1, 1989, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) Details in each report

Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 1251 of this title; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, the rate, size, and distribution of population growth in the United States, and the impact on specific States and local units of government of high rates of immigration resettlement.

(c) History and projections

The information (referred to in subsection (b) of this section) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) Recommendations

The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under subchapter II of this chapter bearing on the admission and entry of such aliens to the United States.

(Pub. L. 99–603, title IV, § 401, Nov. 6, 1986, 100 Stat. 3440.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

EX. ORD. NO. 12789. DELEGATION OF REPORTING FUNCTIONS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99–603 (''Reform Act'') [title IV of Pub. L. 99–603, Nov. 6, 1986, 100 Stat. 3440, which enacted section 1364 of this title and provisions set out as notes under sections 1101, 1187, 1188, 1255a, and 1324a of this title], it is hereby ordered as follows:

SECTION 1. The Attorney General shall: (a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(3)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 2. The Secretary of Labor shall: (a) perform the functions vested in the President by section 402(3)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SEC. 3. The functions delegated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A–19.

SEC. 4. This order shall be effective immediately.

GEORGE BUSH.

§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) of this section is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) of this section is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) "State" defined

The term 'State' has the meaning given such term in section 1101(a)(36) of this title.

(Pub. L. 99–603, title V, § 501, Nov. 6, 1986, 100 Stat. 3443.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

REGULATIONS

Pub. L. 103–317, title VIII, Aug. 26, 1994, 108 Stat. 1778, provided in part: "That the Attorney General shall promulgate regulations to (a) prescribe requirements for program participation eligibility for States, (b) require verification by States of the eligible incarcerated population data with the Immigration and Naturalization Service, (c) prescribe a formula for distributing assistance to eligible States, and (d) award assistance to eligible States".

CROSS REFERENCES

Assistance to States and counties for costs of incarcerating certain Cuban nationals, see section 1522(f) of this title.

SUBCHAPTER III—NATIONALITY AND NATURALIZATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1101, 1186a, 1186b, 1255a, 1438 of this title.

PART I—NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

§ 1401. Nationals and citizens of United States at birth

The following shall be nationals and citizens of the United States at birth:

(a) a person born in the United States, and subject to the jurisdiction thereof;

(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

(June 27, 1952, ch. 477, title III, ch. 1, § 301, 66 Stat. 235; Nov. 6, 1966, Pub. L. 89–770, 80 Stat. 1322; Oct. 27, 1972, Pub. L. 92–584, §§ 1, 3, 86 Stat. 1289; Oct. 10, 1978, Pub. L. 95–432, §§ 1, 3, 92 Stat. 1046; Nov. 14, 1986, Pub. L. 99–653, § 12, 100 Stat. 3657; Oct. 25, 1994, Pub. L. 103–416, title I, § 101(a), 108 Stat. 4306.)

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–416 added subsec. (h).

1986—Subsec. (g). Pub. L. 99–653 substituted "five years, at least two" for "ten years, at least five".

1978—Subsec. (a). Pub. L. 95–432, § 3, struck out "(a)" before "The following" and redesignated pars. (1) to (7) as (a) to (g), respectively.

Subsec. (b). Pub. L. 95–432, § 1, struck out subsec. (b) which provided that any person who was a national or citizen of the United States under subsec. (a)(7) lose his nationality or citizenship unless he be continuously physically present in the United States for a period of not less than two years between the ages of 14 and 28

or that the alien parent be naturalized while the child was under 18 years of age and the child began permanent residence in the United States while under 18 years of age and that absence from the United States of less than 60 days not break the continuity of presence.

Subsec. (c). Pub. L. 95–432, §1, struck out subsec. (c) which provided that former subsec. (b) apply to persons born abroad subsequent to May 24, 1934, except that this not be construed to alter the citizenship of any person born abroad subsequent to May 24, 1934 who, prior to the effective date of this chapter, had taken up residence in the United States before attaining 16 years of age, and thereafter, whether before or after the effective date of this chapter, complied with the residence requirements of section 201(g) and (h) of the Nationality Act of 1940.

Subsec. (d). Pub. L. 95–432, §1, struck out subsec. (d) which provided that nothing in former subsec. (b) be construed to alter the citizenship of any person who came into the United States prior to Oct. 27, 1972, and who, whether before or after Oct. 27, 1972, immediately following such coming complied with the physical presence requirements for retention of citizenship specified in former subsec. (b), prior to amendment of former subsec. (b) by Pub. L. 92–584.

1972—Subsec. (b). Pub. L. 92–584, §1, substituted provisions that nationals and citizens of the United States under subsec. (a)(7), lose such status unless they are present continuously in the United States for two years between the ages of fourteen and twenty eight years, or the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years, and that absence from the United States of less than sixty days will not break the continuity of presence, for provisions that such status would be lost unless the nationals and citizens come to the United States prior to attaining twenty three years and be present continuously in the United States for five years, and that such presence should be between the age of fourteen and twenty eight years.

Subsec. (d). Pub. L. 92–584, §3, added subsec. (d).

1966—Subsec. (a)(7). Pub. L. 89–770 authorized periods of employment with the United States Government or with an international organization by the citizen parent, or any periods during which the citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization, to be included in order to satisfy the physical presence requirement, and permitted the proviso to be applicable to persons born on or after December 24, 1952.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 23(d) of Pub. L. 99–653, as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: ''The amendment made by section 12 [amending this section] shall apply to persons born on or after November 14, 1986.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–432 provided that the amendment made by that section is effective Oct. 10, 1978.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

WAIVER OF RETENTION REQUIREMENTS

Section 101(b) of Pub. L. 103–416 provided that: ''Any provision of law (including section 301(b) of the Immigration and Nationality Act [8 U.S.C. 1401(b)] (as in effect before October 10, 1978), and the provisos of section 201(g) of the Nationality Act of 1940 [former 8 U.S.C. 601(g)]) that provided for a person's loss of citizenship or nationality if the person failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person's descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a)).''

RETROACTIVE APPLICATION OF 1994 AMENDMENT

Section 101(c) of Pub. L. 103–416 provided that:

''(1) Except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of the enactment of this Act [Oct. 25, 1994]) as though the amendment made by subsection (a) [amending this section], and subsection (b) [enacting provisions set out above], had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes [former 8 U.S.C. 6] (as in effect before the enactment of the Act of May 24, 1934 (48 Stat. 797)).

''(2) The retroactive application of the amendment made by subsection (a), and subsection (b), shall not confer citizenship on, or affect the validity of any denaturalization, deportation, or exclusion action against, any person who is or was excludable from the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) (or predecessor provision) or who was excluded from, or who would not have been eligible for admission to, the United States under the Displaced Persons Act of 1948 [former 50 App. U.S.C. 1951 et seq.] or under section 14 of the Refugee Relief Act of 1953 [former 50 App. U.S.C. 1971*l*].''

APPLICATION OF 1994 AMENDMENT TO TRANSMISSION OF CITIZENSHIP

Section 101(d) of Pub. L. 103–416 provided that: ''This section [amending this section and enacting provisions set out above], the amendments made by this section, and any retroactive application of such amendments shall not effect any residency or other retention requirements for citizenship as in effect before October 10, 1978, with respect to the transmission of citizenship.''

ADMISSION OF ALASKA AS STATE

Alaska Statehood provisions as not conferring, terminating, or restoring United States nationality, see section 21 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding former section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- National of the United States, see section 1101(a)(22) of this title.
- Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
- Parent, as used in this subchapter, see section 1101(c)(2) of this title.
- Residence, see section 1101(a)(33) of this title.
- United States, see section 1101(a)(38) of this title.

Persons born and naturalized in United States and subject to its jurisdiction as citizens of United States and State wherein they reside, see Const. Art. XIV, §1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401a, 1408, 1409, 1435, 1452 of this title; title 26 sections 877, 2107, 2501.

§1401a. Birth abroad before 1952 to service parent

Section 1401(g) of this title shall be considered to have been and to be applicable to a child born outside of the United States and its outlying

possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201(g) or (i) of the Nationality Act of 1940.

(Mar. 16, 1956, ch. 85, 70 Stat. 50; Dec. 29, 1981, Pub. L. 97–116, § 18(u)(2), 95 Stat. 1621.)

REFERENCES IN TEXT

Section 201(g) and (i) of the Nationality Act of 1940, referred to in text, which were repealed by act June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280, eff. Dec. 24, 1952, provided as follows:

''The following shall be nationals and citizens of the United States at birth:

* * * * *

''(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

''The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation:

* * * * *

''(i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of the termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided*, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further*, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.''

CODIFICATION

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

AMENDMENTS

1981—Pub. L. 97–116 substituted ''Section 1401(g)'' for ''Section 1401(a)(7)''.

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.

§ 1401b. Repealed. Pub. L. 92–584, § 2, Oct. 27, 1972, 86 Stat. 1289

Section, Pub. L. 85–316, § 16, Sept. 11, 1957, 71 Stat. 644, provided that absence from the United States of less than twelve months would not break the continuity of presence in the administration of section 1401(b) of this title. See section 1401(b) of this title.

§ 1402. Persons born in Puerto Rico on or after April 11, 1899

All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.

(June 27, 1952, ch. 477, title III, ch. 1, § 302, 66 Stat. 236.)

CROSS REFERENCES

United States defined, see section 1101 of this title.

§ 1403. Persons born in the Canal Zone or Republic of Panama on or after February 26, 1904

(a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

(June 27, 1952, ch. 477, title III, ch. 1, § 303, 66 Stat. 236.)

REFERENCES IN TEXT

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

The effective date of this chapter, referred to in text, is the 180th day immediately following June 27, 1952. See section 407 of act June 27, 1952, set out as an Effective Date note under section 1101 of this title.

CHANGE OF NAME

Panama Railroad Company redesignated Panama Canal Company by act Sept. 26, 1950, ch. 1049, § 2(a)(2), 64 Stat. 1038. References to Panama Canal Company in

laws of the United States are deemed to refer to Panama Canal Commission pursuant to section 3602(b)(5) of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

United States defined, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1452 of this title.

§ 1404. Persons born in Alaska on or after March 30, 1867

A person born in Alaska on or after March 30, 1867, except a noncitizen Indian, is a citizen of the United States at birth. A noncitizen Indian born in Alaska on or after March 30, 1867, and prior to June 2, 1924, is declared to be a citizen of the United States as of June 2, 1924. An Indian born in Alaska on or after June 2, 1924, is a citizen of the United States at birth.

(June 27, 1952, ch. 477, title III, ch. 1, § 304, 66 Stat. 237.)

ADMISSION OF ALASKA AS STATE

Alaska Statehood provisions as not repealing, amending, or modifying the provisions of this section, see section 24 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding former section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

United States defined, see section 1101 of this title.

§ 1405. Persons born in Hawaii

A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is declared to be a citizen of the United States as of April 30, 1900. A person born in Hawaii on or after April 30, 1900, is a citizen of the United States at birth. A person who was a citizen of the Republic of Hawaii on August 12, 1898, is declared to be a citizen of the United States as of April 30, 1900.

(June 27, 1952, ch. 477, title III, ch. 1, § 305, 66 Stat. 237.)

ADMISSION OF HAWAII AS STATE

Hawaii Statehood provisions as not repealing, amending, or modifying the provisions of this section, see section 20 of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 13, set out as a note at the beginning of chapter 3 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

United States defined, see section 1101 of this title.

§ 1406. Persons living in and born in the Virgin Islands

(a) The following persons and their children born subsequent to January 17, 1917, and prior to February 25,1927, are declared to be citizens of the United States as of February 25, 1927:

(1) All former Danish citizens who, on January 17, 1917, resided in the Virgin Islands of the United States, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who did not make the declaration required to preserve their Danish citizenship by article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark, or who, having made such a declaration have heretofore renounced or may hereafter renounce it by a declaration before a court of record;

(2) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in those islands, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country;

(3) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in the United States, and were residing in those islands on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country; and

(4) All natives of the Virgin Islands of the United States who, on June 28, 1932, were residing in continental United States, the Virgin Islands of the United States, Puerto Rico, the Canal Zone, or any other insular possession or territory of the United States, and who, on June 28, 1932, were not citizens or subjects of any foreign country, regardless of their place of residence on January 17, 1917.

(b) All persons born in the Virgin Islands of the United States on or after January 17, 1917, and prior to February 25, 1927, and subject to the jurisdiction of the United States are declared to be citizens of the United States as of February 25, 1927; and all persons born in those islands on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth.

(June 27, 1952, ch. 477, title III, ch. 1, § 306, 66 Stat. 237.)

CROSS REFERENCES

Definition of the term—
Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
Child, as used in this subchapter, see section 1101(c)(1) of this title.
United States, see section 1101(a)(38) of this title.

§ 1407. Persons living in and born in Guam

(a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States as of August 1, 1950, if they were residing on August 1, 1950, on the island of Guam or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the island of Guam on April 11, 1899, including those temporarily absent from the island on that date, who were Spanish subjects, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality; and

(2) All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent from the island on that date, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are declared to be citizens of the

United States: *Provided*, That in the case of any person born before August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall have made, prior to August 1, 1952, a declaration under oath of such desire, said declaration to be in form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this chapter.

(June 27, 1952, ch. 477, title III, ch. 1, § 307, 66 Stat. 237.)

CROSS REFERENCES

Definition of the term—
Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
Child, as used in this subchapter, see section 1101(c)(1) of this title.
National, see section 1101(a)(21) of this title.
National of the United States, see section 1101(a)(22) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

§ 1408. Nationals but not citizens of the United States at birth

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 1401(g) of this title shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

(June 27, 1952, ch. 477, title III, ch. 1, § 308, 66 Stat. 238; Aug. 27, 1986, Pub. L. 99–396, § 15(a), 100 Stat. 842; Oct. 24, 1988, Pub. L. 100–525, § 3(2), 102 Stat. 2614.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–525 amended Pub. L. 99–396. See 1986 Amendment note below.

1986—Par. (4). Pub. L. 99–396, as amended by Pub. L. 100–525, added par. (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 3 of Pub. L. 100–525 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–396.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 15(b) of Pub. L. 99–396 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to persons born before, on, or after the date of the enactment of this Act [Aug. 27, 1986]. In the case of a person born before the date of the enactment of this Act—

''(1) the status of a national of the United States shall not be considered to be conferred upon the person until the date the person establishes to the satisfaction of the Secretary of State that the person meets the requirements of section 308(4) of the Immigration and Nationality Act [par. (4) of this section], and

''(2) the person shall not be eligible to vote in any general election in American Samoa earlier than January 1, 1987.''

CROSS REFERENCES

Definition of the term—
National of the United States, see section 1101(a)(22) of this title.
Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
Parent, as used in this subchapter, see section 1101(c)(2) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1409 of this title.

§ 1409. Children born out of wedlock

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408 of this title, shall apply as of the date of birth to a person born out of wedlock if—

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years—

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

(b) Except as otherwise provided in section 405 of this Act, the provisions of section 1401(g) of this title shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

(June 27, 1952, ch. 477, title III, ch. 1, § 309, 66 Stat. 238; Dec. 29, 1981, Pub. L. 97–116, § 18(*l*), 95 Stat. 1620; Nov. 14, 1986, Pub. L. 99–653, § 13, 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, §§ 8(k), 9(r), 102 Stat. 2617, 2621.)

REFERENCES IN TEXT

Section 405 of this Act, referred to in subsec. (b), is section 405 of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–525, § 8(k), amended Pub. L. 99–653. See 1986 Amendment note below.

Subsec. (b). Pub. L. 100–525, § 9(r)(1), substituted ''before December 24, 1952'' for ''prior to the effective date of this chapter'' and ''at any time'' for ''before or after the effective date of this chapter and''.

Subsec. (c). Pub. L. 100–525, § 9(r)(2), substituted ''after December 23, 1952'' for ''on or after the effective date of this chapter''.

1986—Subsec. (a). Pub. L. 99–653, as amended by Pub. L. 100–525, § 8(k), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this chapter, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.''

1981—Subsec. (a). Pub. L. 97–116, § 18(*l*)(1), substituted ''(c), (d), (e), and (g) of section 1401'' for ''(3) to (5) and (7) of section 1401(a)''.

Subsec. (b). Pub. L. 97–116, § 18(*l*)(2), substituted ''section 1401(g)'' for ''section 1401(a)(7)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(k) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 23(e) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that:

''(1) Except as provided in paragraph (2)(B), the new section 309(a) [8 U.S.C. 1409(a)] (as defined in paragraph (4)(A)) shall apply to persons who have not attained 18 years of age as of the date of the enactment of this Act [Nov. 14, 1986].

''(2) The old section 309(a) shall apply—

''(A) to any individual who has attained 18 years of age as of the date of the enactment of this Act, and

''(B) any individual with respect to whom paternity was established by legitimation before such date.

''(3) An individual who is at least 15 years of age, but under 18 years of age, as of the date of the enactment of this Act, may elect to have the old section 309(a) apply to the individual instead of the new section 309(a).

''(4) In this subsection:

''(A) The term 'new section 309(a)' means section 309(a) of the Immigration and Nationality Act [8 U.S.C. 1409(a)], as amended by section 13 of this Act [section 13 of Pub. L. 99–653] and as in effect after the date of the enactment of this Act.

''(B) The term 'old section 309(a)' means section 309(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.''

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.

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101(c)(1) of this title.

National, see section 1101(a)(21) of this title.

National of the United States, see section 1101(a)(22) of this title.

PART II—NATIONALITY THROUGH NATURALIZATION

§ 1421. Naturalization authority

(a) Authority in Attorney General

The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General.

(b) Court authority to administer oaths

(1) Jurisdiction

Subject to section 1448(c) of this title—

(A) General jurisdiction

Except as provided in subparagraph (B), each applicant for naturalization may choose to have the oath of allegiance under section 1448(a) of this title administered by the Attorney General or by an eligible court described in paragraph (5). Each such eligible court shall have authority to administer such oath of allegiance to persons residing within the jurisdiction of the court.

(B) Exclusive authority

An eligible court described in paragraph (5) that wishes to have exclusive authority to administer the oath of allegiance under section 1448(a) of this title to persons residing within the jurisdiction of the court during the period described in paragraph (3)(A)(i) shall notify the Attorney General of such wish and, subject to this subsection, shall have such exclusive authority with respect to such persons during such period.

(2) Information

(A) General information

In the case of a court exercising authority under paragraph (1), in accordance with procedures established by the Attorney General—

(i) the applicant for naturalization shall notify the Attorney General of the intent to be naturalized before the court, and

(ii) the Attorney General—

(I) shall forward to the court (not later than 10 days after the date of approval of an application for naturalization in the case of a court which has provided notice under paragraph (1)(B)) such information

as may be necessary to administer the oath of allegiance under section 1448(a) of this title, and

(II) shall promptly forward to the court a certificate of naturalization (prepared by the Attorney General).

(B) Assignment of individuals in the case of exclusive authority

If an eligible court has provided notice under paragraph (1)(B), the Attorney General shall inform each person (residing within the jurisdiction of the court), at the time of the approval of the person's application for naturalization, of—

(i) the court's exclusive authority to administer the oath of allegiance under section 1448(a) of this title to such a person during the period specified in paragraph (3)(A)(i), and

(ii) the date or dates (if any) under paragraph (3)(B) on which the court has scheduled oath administration ceremonies.

If more than one eligible court in an area has provided notice under paragraph (1)(B), the Attorney General shall permit the person, at the time of the approval, to choose the court to which the information will be forwarded for administration of the oath of allegiance under this section.

(3) Scope of exclusive authority

(A) Limited period and advance notice required

The exclusive authority of a court to administer the oath of allegiance under paragraph (1)(B) shall apply with respect to a person—

(i) only during the 45-day period beginning on the date on which the Attorney General certifies to the court that an applicant is eligible for naturalization, and

(ii) only if the court has notified the Attorney General, prior to the date of certification of eligibility, of the day or days (during such 45-day period) on which the court has scheduled oath administration ceremonies.

(B) Authority of Attorney General

Subject to subparagraph (C), the Attorney General shall not administer the oath of allegiance to a person under subsection (a) of this section during the period in which exclusive authority to administer the oath of allegiance may be exercised by an eligible court under this subsection with respect to that person.

(C) Waiver of exclusive authority

Notwithstanding the previous provisions of this paragraph, a court may waive exclusive authority to administer the oath of allegiance under section 1448(a) of this title to a person under this subsection if the Attorney General has not provided the court with the certification described in subparagraph (A)(i) within a reasonable time before the date scheduled by the court for oath administration ceremonies. Upon notification of a court's waiver of jurisdiction, the Attorney General shall promptly notify the applicant.

(4) Issuance of certificates

The Attorney General shall provide for the issuance of certificates of naturalization at the time of administration of the oath of allegiance.

(5) Eligible courts

For purposes of this section, the term ''eligible court'' means—

(A) a district court of the United States in any State, or

(B) any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited.

(c) Judicial review

A person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5. Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.

(d) Sole procedure

A person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this subchapter and not otherwise.

(June 27, 1952, ch. 477, title III, ch. 2, § 310, 66 Stat. 239; July 7, 1958, Pub. L. 85–508, § 25, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86–3, § 20(c), 73 Stat. 13; Sept. 26, 1961, Pub. L. 87–301, § 17, 75 Stat. 656; Oct. 24, 1988, Pub. L. 100–525, § 9(s), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 401(a), 104 Stat. 5038; Dec. 12, 1991, Pub. L. 102–232, title I, § 102(a), title III, § 305(a), 105 Stat. 1734, 1749; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(u), 108 Stat. 4318.)

AMENDMENTS

1994—Subsec. (b)(5)(A). Pub. L. 103–416 substituted ''district court'' for ''District Court''.

1991—Subsec. (b). Pub. L. 102–232, § 102(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''An applicant for naturalization may choose to have the oath of allegiance under section 1448(a) of this title administered by the Attorney General or by any district court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts in this subsection specified to administer the oath of allegiance shall extend only to persons resident within the respective jurisdiction of such courts.''

Pub. L. 102–232, § 305(a), substituted ''district court'' for ''District Court''.

1990—Pub. L. 101–649 amended section generally, substituting provisions authorizing Attorney General to naturalize persons as citizens, for provisions granting certain courts exclusive jurisdiction to naturalize.

1988—Subsec. (e). Pub. L. 100–525 struck out subsec. (e) which read as follows: ''Notwithstanding the provisions of section 405(a), any petition for naturalization filed on or after September 26, 1961, shall be heard and determined in accordance with the requirements of this subchapter.''

1961—Subsec. (e). Pub. L. 87–301 added subsec. (e).

1959—Subsec. (a). Pub. L. 86–3 struck out provisions which conferred jurisdiction on District Court for Territory of Hawaii. See section 91 of Title 28, Judiciary and Judicial Procedure, and notes thereunder.

1958—Subsec. (a). Pub. L. 85–508 struck out provisions which conferred jurisdiction on District Court for Territory of Alaska. See section 81A of Title 28, which established a United States District Court for the State of Alaska.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Section 102(c) of title I of Pub. L. 102–232 provided that: ''The amendments made by this title [amending this section and sections 1448, 1450, and 1455 of this title] shall take effect 30 days after the date of the enactment of this Act [Dec. 12, 1991].''

Amendment by section 305(a) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT; SAVINGS PROVISION

Section 408 of title IV of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 305(n), Dec. 12, 1991, 105 Stat. 1750, provided that:

''(a) EFFECTIVE DATE.—

''(1) NO NEW COURT PETITIONS AFTER EFFECTIVE DATE.—No court shall have jurisdiction, under section 310(a) of the Immigration and Nationality Act [8 U.S.C. 1421(a)], to naturalize a person unless a petition for naturalization with respect to that person has been filed with the court before October 1, 1991.

''(2) TREATMENT OF CURRENT COURT PETITIONS.—

''(A) CONTINUATION OF CURRENT RULES.—Except as provided in subparagraph (B), any petition for naturalization which may be pending in a court on October 1, 1991, shall be heard and determined in accordance with the requirements of law in effect when the petition was filed.

''(B) PERMITTING WITHDRAWAL AND CONSIDERATION OF APPLICATION UNDER NEW RULES.—In the case of any petition for naturalization which may be pending in any court on January 1, 1992, the petitioner may withdraw such petition and have the petitioner's application for naturalization considered under the amendments made by this title [amending this section, sections 1101, 1423, 1424, 1426 to 1430, 1433, 1435 to 1440, 1441 to 1451, and 1455 of this title, and section 1429 of Title 18, Crimes and Criminal Procedure, and repealing section 1459 of this title], but only if the petition is withdrawn not later than 3 months after the effective date.

''(3) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this title are effective as of the date of the enactment of this Act [Nov. 29, 1990].

''(b) INTERIM, FINAL REGULATIONS.—The Attorney General shall prescribe regulations (on an interim, final basis or otherwise) to implement the amendments made by this title on a timely basis.

''(c) CONTINUING DUTIES.—The amendments to section 339 of the Immigration and Nationality Act [8 U.S.C. 1450] (relating to functions and duties of clerks) shall not apply to functions and duties respecting petitions filed before October 1, 1991.

''(d) GENERAL SAVINGS PROVISIONS.—(1) Nothing contained in this title [amending this section, sections 1101, 1423, 1424, 1426 to 1430, 1433, 1435 to 1440, 1441 to 1451, and 1455 of this title, and section 1429 of Title 18, Crimes and Criminal Procedure, repealing section 1459 of this title, and enacting provisions set out as a note under section 1440 of this title], unless otherwise specifically provided, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certification of citizenship, or other document or proceeding which is valid as of the effective date; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, as of the effective date.

''(2) As to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters, the provisions of law repealed by this title are, unless otherwise specifically provided, hereby continued in force and effect.

''(e) TREATMENT OF SERVICE IN ARMED FORCES OF FOREIGN COUNTRY.—The amendments made by section 404 [amending section 1426 of this title] (relating to treatment of service in armed forces of a foreign country) shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and shall apply to exemptions from training or service obtained before, on, or after such date.

''(f) FILIPINO WAR VETERANS.—Section 405 [enacting provisions set out as a note under section 1440 of this title] (relating to naturalization of natives of the Philippines through active-duty service under United States command during World War II) shall become effective on May 1, 1991, without regard to whether regulations to implement such section have been issued by such date.''

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding former section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding former section 491 of Title 48.

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
State, see section 1101(a)(36) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1435, 1438, 1448, 1450 of this title.

§ 1422. Eligibility for naturalization

The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married.

(June 27, 1952, ch. 477, title III, ch. 2, § 311, 66 Stat. 239; Oct. 24, 1988, Pub. L. 100–525, § 9(t), 102 Stat. 2621.)

AMENDMENTS

1988—Pub. L. 100–525 struck out at end ''Notwithstanding section 405(b) of this Act, this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this chapter.''

CROSS REFERENCES

Definition of naturalization and United States, see section 1101 of this title.

§ 1423. Requirements as to understanding the English language, history, principles and form of government of the United States

(a) No person except as otherwise provided in this subchapter shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: *Provided*, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

(b)(1) The requirements of subsection (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith.

(2) The requirement of subsection (a)(1) of this section shall not apply to any person who, on the date of the filing of the person's application for naturalization as provided in section 1445 of this title, either—

(A) is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence, or

(B) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years subsequent to a lawful admission for permanent residence.

(3) The Attorney General, pursuant to regulations, shall provide for special consideration, as determined by the Attorney General, concerning the requirement of subsection (a)(2) of this section with respect to any person who, on the date of the filing of the person's application for naturalization as provided in section 1445 of this title, is over sixty-five years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence.

(June 27, 1952, ch. 477, title III, ch. 2, § 312, 66 Stat. 239; Nov. 2, 1978, Pub. L. 95–579, § 3, 92 Stat. 2474; Nov. 29, 1990, Pub. L. 101–649, title IV, § 403, 104 Stat. 5039; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(m)(2), 105 Stat. 1750; Oct. 25, 1994, Pub. L. 103–416, title I, § 108(a), 108 Stat. 4309.)

AMENDMENTS

1994—Pub. L. 103–416 designated existing provisions as subsec. (a), struck out ''this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the date of the filing of his application for naturalization as provided in section 1445 of this title, either (A) is over 50 years of age and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence, or (B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence: *Provided further*, That'', after ''*Provided*, That'', substituted ''this paragraph'' for ''this section'' after ''requirements of'', and added subsec. (b).

1991—Pub. L. 102–232 substituted ''application'' for ''petition'' in introductory provisions and par. (1).

1990—Par. (1). Pub. L. 101–649 substituted ''either (A) is over 50 years of age and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence, or (B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence'' for ''is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence''.

1978—Par. (1). Pub. L. 95–579 substituted ''person who, on the date of the filing of his petition for naturalization as provided in section 1445 of this title, is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence'' for ''person who, on the effective date of this chapter, is over fifty years of age and has been living in the United States for periods totaling at least twenty years''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 108(c) of Pub. L. 103–416 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 25, 1994] and shall apply to applications for naturalization filed on or after such date and to such applications pending on such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

REGULATIONS

Section 108(d) of Pub. L. 103–416 provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 25, 1994], the Attorney General shall promulgate regulations to carry out section 312(b)(3) of the Immigration and Nationality Act [8 U.S.C. 1423(b)(3)] (as amended by subsection (a)).''

CROSS REFERENCES

Naturalization defined, see section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1255a of this title; title 20 section 3283.

§ 1424. Prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government

(a) Notwithstanding the provisions of section 405(b) of this Act, no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or

(F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5) of this subsection.

(b) The provisions of this section or of any other section of this title shall not be construed as declaring that any of the organizations referred to in this section or in any other section of this title do not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means.

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the application for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the application is filed he may not be included within such classes.

(d) Any person who is within any of the classes described in subsection (a) of this section solely because of past membership in, or past affiliation with, a party or organization may be naturalized without regard to the provisions of subsection (c) of this section if such person establishes that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation of law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.

(June 27, 1952, ch. 477, title III, ch. 2, § 313, 66 Stat. 240; Oct. 24, 1988, Pub. L. 100–525, § 9(u), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(1), 104 Stat. 5041; Dec. 12, 1991, Pub. L. 102–232, title III, § 309(b)(13), 105 Stat. 1759; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(v), 108 Stat. 4318.)

REFERENCES IN TEXT

Section 405(b) of this Act, referred to in subsec. (a), is section 405(b) of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–416 substituted ''or'' for ''and'' before ''(F)''.

1991—Subsec. (a)(2). Pub. L. 102–232 inserted ''and'' before ''(F)'' and struck out ''; (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 786 of title 50; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 786 of title 50'' after ''may hereafter adopt''.

1990—Subsec. (c). Pub. L. 101–649 substituted ''application'' for ''petition'' wherever appearing.

1988—Subsec. (a)(2)(D). Pub. L. 100–525 substituted ''party of'' for ''party or''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 219(v) of Pub. L. 103–416 provided that the amendment made by that section is effective Dec. 12, 1991.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—
Advocates, see section 1101(a)(2) of this title.
Advocating a doctrine, see section 1101(e)(1) of this title.
Advocating the doctrines of world communism, see section 1101(e)(3) of this title.
Affiliation, see section 1101(e)(2) of this title.
Doctrine, see section 1101(a)(12) of this title.
Foreign state, see section 1101(a)(14) of this title.
Naturalization, see section 1101(a)(23) of this title.
Organization, see section 1101(a)(28) of this title.
Totalitarian party and totalitarian dictatorship, see section 1101(a)(37) of this title.
United States, see section 1101(a)(38) of this title.
World communism, see section 1101(a)(40) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1427, 1435, 1451 of this title.

§ 1425. Ineligibility to naturalization of deserters from the Armed Forces

A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military, air, or naval forces of the United States, or who, having been duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or who, whether or not having been duly enrolled, went or shall go beyond the limits of the United States, with intent to avoid any draft into the military, air, or naval service, lawfully ordered, shall, upon conviction thereof by a court martial or a court of competent jurisdiction, be permanently ineligible to become a citizen of the United States; and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof.

(June 27, 1952, ch. 477, title III, ch. 2, § 314, 66 Stat. 241.)

CROSS REFERENCES

Definition of the term—
Ineligible to citizenship, see section 1101(a)(19) of this title.
Naturalization, see section 1101(a)(23) of this title.
United States, see section 1101(a)(38) of this title.
Loss of nationality by deserting military, air or naval forces, see section 1481 of this title.

§ 1426. Citizenship denied alien relieved of service in Armed Forces because of alienage

(a) Permanent ineligibility

Notwithstanding the provisions of section 405(b)[1] but subject to subsection (c) of this section, any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) Conclusiveness of records

The records of the Selective Service System or of the Department of Defense shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien.

(c) Service in armed forces of foreign country

An alien shall not be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of the United States pursuant to the exercise of rights under a treaty, if before the time of the exercise of such rights the alien served in the Armed Forces of a foreign country of which the alien was a national.

(June 27, 1952, ch. 477, title III, ch. 2, § 315, 66 Stat. 242; Oct. 24, 1988, Pub. L. 100–525, § 9(v), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 404, 104 Stat. 5039.)

REFERENCES IN TEXT

Section 405(b), referred to in subsec. (a), is section 405(b) of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649, § 404(1), inserted ''but subject to subsection (c) of this section'' after ''section 405(b)''.
Subsec. (c). Pub. L. 101–649, § 404(2), added subsec. (c).
1988—Subsec. (b). Pub. L. 100–525 substituted ''Department of Defense'' for ''National Military Establishment''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to exemptions from training or service obtained before, on, or after Nov. 29, 1990, see section 408(e) of Pub. L. 101–649, set out as a note under section 1421 of this title.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Ineligible to citizenship, see section 1101(a)(19) of this title.
United States, see section 1101(a)(38) of this title.
National Security Training Corps, persons liable for training and service, see section 454 of Title 50, Appendix, War and National Defense.

§ 1427. Requirements of naturalization

(a) Residence

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admis-

[1] See References in Text note below.

sion to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absences

Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under section 1447(a) of this title, shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries in such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

(c) Physical presence

The granting of the benefits of subsection (b) of this section shall not relieve the applicant from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of this section of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing an application for naturalization.

(d) Moral character

No finding by the Attorney General that the applicant is not deportable shall be accepted as conclusive evidence of good moral character.

(e) Determination

In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period.

(f) Persons making extraordinary contributions to national security

(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within a particular State or district of the Service in the United States shall be required: *Provided*, That the applicant has continuously resided in the United States for at least one year prior to naturalization: *Provided further*, That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of section 1253(h)(2) of this title.

(2) An applicant for naturalization under this subsection may be administered the oath of allegiance under section 1448(a) of this title by any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection.

(June 27, 1952, ch. 477, title III, ch. 2, § 316, 66 Stat. 242; Dec. 29, 1981, Pub. L. 97–116, § 14, 95 Stat. 1619; Dec. 4, 1985, Pub. L. 99–169, title VI, § 601, 99 Stat. 1007; Nov. 29, 1990, Pub. L. 101–649, title IV, §§ 402, 407(c)(2), (d)(1), (e)(1), 104 Stat. 5038, 5041, 5046.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Pub. L. 101–649, § 402, substituted ''and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months'' for ''and who has resided within the State in which the petitioner filed the petition for at least six months'' in cl. (1).

Subsec. (b). Pub. L. 101–649, § 407(d)(1)(A), (B), substituted ''the Attorney General'' for ''the court'' in first par. and subpar. (2) of second par., and ''date of any hearing under section 1447(a) of this title'' for ''date of final hearing'' in first par.

Pub. L. 101–649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (c). Pub. L. 101–649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (d). Pub. L. 101–649, § 407(c)(2), substituted reference to applicant for reference to petitioner.

Subsec. (e). Pub. L. 101–649, § 407(d)(1)(C), substituted ''the Attorney General'' for ''the court''.

Pub. L. 101–649, § 407(c)(2), substituted references to applicant, applicant's, and application for references to petitioner, petitioner's, and petition wherever appearing.

Subsec. (f). Pub. L. 101–649, § 407(e)(1), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the petitioner is a member or affiliate are pending under section 792 or 793 of title 50.''

Subsec. (f)(1). Pub. L. 101–649, § 407(d)(1)(D), substituted ''within a particular State or district of the Service in the United States'' for ''within the jurisdiction of the court''.

Pub. L. 101–649, § 407(c)(2), substituted references to applicant for references to petitioner wherever appearing.

Subsec. (f)(2). Pub. L. 101–649, § 407(d)(1)(E), amended first sentence generally. Prior to amendment, first sentence read as follows: ''A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner.''

Subsec. (f)(3). Pub. L. 101–649, § 407(c)(2), substituted reference to application for reference to petition.

1985—Subsec. (g). Pub. L. 99–169 added subsec. (g).

1981—Subsec. (b). Pub. L. 97–116 inserted provision that the spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

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.

CROSS REFERENCES

Central Intelligence Agency, see section 403 et seq. of Title 50, War and National Defense.

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Attorney General, see section 1101(a)(5) of this title.
- Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Person of good moral character, see section 1101(f) of this title.
- Residence, see section 1101(a)(33) of this title.
- United States, see section 1101(a)(38) of this title.

Proof of qualifications, see section 1446 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1430, 1438, 1439, 1441, 1445 of this title.

§ 1428. Temporary absence of persons performing religious duties

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 1427(a) of this title, notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

(June 27, 1952, ch. 477, title III, ch. 2, § 317, 66 Stat. 243; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(3), (d)(2), 104 Stat. 5041.)

AMENDMENTS

1990—Pub. L. 101–649, § 407(d)(2), struck out ''and the naturalization court'' after ''Attorney General''.

Pub. L. 101–649, § 407(c)(3), substituted ''application'' for ''petition''.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Organization, see section 1101(a)(28) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

§ 1429. Prerequisite to naturalization; burden of proof

Except as otherwise provided in this subchapter, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b),[1] and except as provided in sections 1439 and 1440 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act: *Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this chapter, shall not be deemed binding in any way upon the Attorney General with respect to the question of whether such person has established his eligibility for naturalization as required by this subchapter.

(June 27, 1952, ch. 477, title III, ch. 2, § 318, 66 Stat. 244; Oct. 24, 1968, Pub. L. 90–633, § 4, 82 Stat. 1344; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(4), (d)(3), 104 Stat. 5041.)

REFERENCES IN TEXT

Section 405(b), referred to in text, is section 405(b) of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

AMENDMENTS

1990—Pub. L. 101–649, § 407(d)(3), in last sentence substituted ''considered by the Attorney General'' for ''finally heard by a naturalization court'' and ''upon the Attorney General'' for ''upon the naturalization court''.

Pub. L. 101–649, § 407(c)(4), substituted ''application'' for ''petition'' and ''applicant'' for ''petitioner''.

1968—Pub. L. 90–633 substituted reference to exception provided in sections 1439 and 1440 of this title for reference to exception provided in sections 1438 and 1439 of this title.

[1] See References in Text note below.

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Entry, see section 1101(a)(13) of this title.
Immigrant visa, see section 1101(a)(16) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1439, 1440 of this title.

§ 1430. Married persons and employees of certain nonprofit organizations

(a) Any person whose spouse is a citizen of the United States may be naturalized upon compliance with all the requirements of this subchapter except the provisions of paragraph (1) of section 1427(a) of this title if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his application has been living in marital union with the citizen spouse, who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months.

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within a State or a district of the Service in the United States or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media

the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his application for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified period of physical presence within the United States or any State or district of the Service in the United States, or proof thereof, shall be required.

(d) Any person who is the surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified physical presence within the United States, or within a State or a district of the Service in the United States shall be required.

(June 27, 1952, ch. 477, title III, ch. 2, § 319, 66 Stat. 244; Aug. 20, 1958, Pub. L. 85–697, § 2, 72 Stat. 687; Dec. 18, 1967, Pub. L. 90–215, § 1(a), 81 Stat. 661; June 29, 1968, Pub. L. 90–369, 82 Stat. 279; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(b)(1), (c)(5), (d)(4), 104 Stat. 5040, 5041.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(5), substituted ''application'' for ''petition'' wherever appearing.

Pub. L. 101–649, § 407(b)(1)(A), substituted ''has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months'' for ''has resided within the State in which he filed his petition for at least six months.''

Subsec. (b). Pub. L. 101–649, § 407(d)(4)(A), substituted ''before the Attorney General'' for ''before the naturalization court'' in cl. (3).

Pub. L. 101–649, § 407(b)(1)(B), substituted ''within a State or a district of the Service in the United States'' for ''within the jurisdiction of the naturalization court''.

Subsec. (c). Pub. L. 101–649, § 407(d)(4)(B), substituted ''Attorney General'' for ''naturalization court'' in cl. (5).

Pub. L. 101–649, § 407(c)(5), substituted ''application'' for ''petition''.

Pub. L. 101–649, § 407(b)(1)(C), substituted ''district of the Service in the United States'' for ''within the jurisdiction of the court''.

Subsec. (d). Pub. L. 101–649, § 407(b)(1)(B), substituted ''within a State or a district of the Service in the United States'' for ''within the jurisdiction of the naturalization court''.

1968—Subsec. (d). Pub. L. 90–369 added subsec. (d).

1967—Subsec. (c). Pub. L. 90–215 added subsec. (c).

1958—Subsec. (b). Pub. L. 85–697 inserted provision relating to persons performing religious duties.

REQUIREMENTS FOR CITIZENSHIP FOR STAFF OF UNITED STATES ARMY RUSSIAN INSTITUTE

Pub. L. 101–193, title V, § 506, Nov. 30, 1989, 103 Stat. 1709, provided that:

''(a) For purposes of section 319(c) of the Immigration and Nationality Act (8 U.S.C. 1430(c)), the United States Army Russian Institute, located in Garmisch, Federal Republic of Germany, shall be considered to be an organization described in clause (1) of this section.

''(b) Subsection (a) shall apply with respect to periods of employment before, on, or after the date of the enactment of this Act [Nov. 30, 1989].

''(c) No more than two persons per year may be naturalized based on the provisions of subsection (a).

''(d) Each instance of naturalization based on the provisions of subsection (a) shall be reported to the Committees on the Judiciary of the Senate and House of Representatives and to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to such naturalization.''

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
Spouse, see section 1101(a)(35) of this title.
United States, see section 1101(a)(38) of this title.
Unmarried, see section 1101(a)(39) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1440–1, 1445 of this title.

§ 1431. Children born outside United States of one alien and one citizen parent; conditions for automatic citizenship

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when—

(1) such naturalization takes place while such child is unmarried and under the age of eighteen years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

(June 27, 1952, ch. 477, title III, ch. 2, § 320, 66 Stat. 245; Oct. 5, 1978, Pub. L. 95–417, § 4, 92 Stat. 917; Dec. 29, 1981, Pub. L. 97–116, § 18(m), 95 Stat. 1620; Nov. 14, 1986, Pub. L. 99–653, § 14, 100 Stat. 3657; Oct. 24, 1988, Pub. L. 100–525, §§ 8(*l*), 9(w), 102 Stat. 2618, 2621.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–525, § 8(*l*), repealed Pub. L. 99–653, § 14. See 1986 Amendment note below.

Subsec. (b). Pub. L. 100–525, § 9(w), substituted ''Subsection (a)'' for ''Subsection (a)(1)''.

1986—Subsec. (a)(1). Pub. L. 99–653, § 14, which inserted ''unmarried and'' after ''such child is'', was repealed by Pub. L. 100–525, § 8(*l*).

1981—Subsec. (b). Pub. L. 97–116 substituted ''an adopted child only if the child'' for ''a child adopted while under the age of sixteen years who''.

1978—Subsec. (a). Pub. L. 95–417 substituted in pars. (1) and (2) ''eighteen years'' for ''sixteen years''.

Subsec. (b). Pub. L. 95–417 substituted provisions making subsec. (a)(1) of this section applicable to adopted children for provisions making subsec. (a) of this section inapplicable to adopted children.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(*l*) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
- Child, as used in this subchapter, see section 1101(c)(1) of this title.
- Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
- Parent, as used in this subchapter, see section 1101(c)(2) of this title.
- Residence, see section 1101(a)(33) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1432. Children born outside United States of alien parents; conditions for automatic citizenship

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

(4) Such naturalization takes place while such child is unmarried and under the age of eighteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

(June 27, 1952, ch. 477, title III, ch. 2, § 321, 66 Stat. 245; Oct. 5, 1978, Pub. L. 95–417, § 5, 92 Stat. 918; Dec. 29, 1981, Pub. L. 97–116, § 18(m), 95 Stat. 1620; Nov. 14, 1986, Pub. L. 99–653, § 15, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, § 8(*l*), 102 Stat. 2618.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–525 repealed Pub. L. 99–653, § 15. See 1986 Amendment note below.

1986—Subsec. (a)(4). Pub. L. 99–653, § 15, which inserted ''unmarried and'' after ''such child is'', was repealed by Pub. L. 100–525.

1981—Subsec. (b). Pub. L. 97–116 substituted ''an adopted child only if the child'' for ''a child adopted while under the age of sixteen years who''.

1978—Subsec. (a). Pub. L. 95–417 substituted in pars. (4) and (5) ''eighteen years'' for ''sixteen years''.

Subsec. (b). Pub. L. 95–417 substituted provisions making subsec. (a) of this section applicable to adopted children for provisions making subsec. (a) of this section inapplicable to adopted children.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
- Child, as used in this subchapter, see section 1101(c)(1) of this title.
- Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
- Parent, as used in this subchapter, see section 1101(c)(2) of this title.
- Residence, see section 1101(a)(33) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1433. Child born outside United States; application for certificate of citizenship requirements

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The child is physically present in the United States pursuant to a lawful admission.

(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 1101(b)(1) of this title.

(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years—

(A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of section 1448(a) of this title, upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Adopted children

Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

(June 27, 1952, ch. 477, title III, ch. 2, § 322, 66 Stat. 246; Oct. 5, 1978, Pub. L. 95–417, § 6, 92 Stat. 918; Dec. 29, 1981, Pub. L. 97–116, § 18(m), (n), 95 Stat. 1620, 1621; Nov. 14, 1986, Pub. L. 99–653, § 16, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, § 8(*l*), 102 Stat. 2618; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(b)(2), (c)(6), (d)(5), 104 Stat. 5040–5042; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(m)(3), 105 Stat. 1750; Oct. 25, 1994, Pub. L. 103–416, title I, § 102(a), 108 Stat. 4306.)

AMENDMENTS

1994—Pub. L. 103–416 amended section generally, substituting present provisions for former provisions which related to: in subsec. (a) naturalization on application of citizen parents; in subsec. (b) adopted children; and subsec. (c) specified period of residence for adopted children.

1991—Pub. L. 102–232 amended section catchline.

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(6), substituted ''applying'' for ''petitioning'' and ''application'' for ''petition''.

Subsec. (c). Pub. L. 101–649, § 407(d)(5), substituted ''Attorney General'' for first reference to ''naturalization court'' in cl. (2)(C).

Pub. L. 101–649, § 407(c)(6), substituted ''applies'' for ''petitions''.

Pub. L. 101–649, § 407(b)(2), substituted ''within a State or a district of the Service in the United States'' for ''within the jurisdiction of the naturalization court''.

1988—Subsec. (a). Pub. L. 100–525 repealed Pub. L. 99–653, § 16. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–653, § 16, which inserted ''unmarried and'' after ''be naturalized if'', was repealed by Pub. L. 100–525.

1981—Subsec. (b). Pub. L. 97–116, § 18(m), substituted ''an adopted child only if the child'' for ''a child adopted while under the age of sixteen years who''.

Subsec. (c). Pub. L. 97–116, § 18(n), added subsec. (c).

1978—Subsec. (b). Pub. L. 95–417 substituted provisions making subsec. (a) of this section applicable to adopted children for provisions making subsec. (a) of this section inapplicable to adopted children.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 102(d) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1452 of this title] shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Oct. 25, 1994].''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101(c)(1) of this title.

Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.

Naturalization, see section 1101(a)(23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Person of good moral character, see section 1101(f) of this title.

United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1448 of this title.

§ 1434. Repealed. Pub. L. 95–417, § 7, Oct. 5, 1978, 92 Stat. 918

Section, acts June 27, 1952, ch. 477, title III, ch. 2, § 323, 66 Stat. 246; Sept. 11, 1957, Pub. L. 85–316, § 11, 71 Stat. 642; Aug. 20, 1958, Pub. L. 85–697, § 1, 72 Stat. 687, related to citizenship of children adopted by citizens.

§ 1435. Former citizens regaining citizenship

(a) Requirements

Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost

United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act of such person other than by marriage be naturalized upon compliance with all requirements of this subchapter, except—

(1) no period of residence or specified period of physical presence within the United States or within the State or district of the Service in the United States where the application is filed shall be required; and

(2) the application need not set forth that it is the intention of the applicant to reside permanently within the United States.

Such person, or any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, shall have, from and after her naturalization, the status of a native-born or naturalized citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(a) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(b) Additional requirements

No person who is otherwise eligible for naturalization in accordance with the provisions of subsection (a) of this section shall be naturalized unless such person shall establish to the satisfaction of the Attorney General that she has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for a period of not less than five years immediately preceding the date of filing an application for naturalization and up to the time of admission to citizenship, and, unless she has resided continuously in the United States since the date of her marriage, has been lawfully admitted for permanent residence prior to filing her application for naturalization.

(c) Oath of allegiance

(1) A woman who was a citizen of the United States at birth and (A) who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, or by her marriage on or after such date to an alien ineligible to citizenship, (B) whose marriage to such alien shall have terminated subsequent to January 12, 1941, and (C) who has not acquired by an affirmative act other than by marriage any other nationality, shall, from and after taking the oath of allegiance required by section 1448 of this title, be a citizen of the United States and have the status of a citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: *Provided*, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the Attorney General or the judge or clerk of a court described in section 1421(b) of this title.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, court, or the Attorney General, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, court, or the Attorney General, shall be delivered to such woman at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.

(d) Persons losing citizenship for failure to meet physical presence retention requirement

(1) A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 1401(b) of this title (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 1448 of this title be a citizen of the United States and have the status of a citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title. Nothing in this subsection or any other provision of law shall be construed as conferring United States citizenship retroactively upon such person during any period in which such person was not a citizen.

(2) The provisions of paragraphs (2) and (3) of subsection (c) of this section shall apply to a person regaining citizenship under paragraph (1) in the same manner as they apply under subsection (c)(1) of this section.

(June 27, 1952, ch. 477, title III, ch. 2, § 324, 66 Stat. 246; Oct. 24, 1988, Pub. L. 100–525, § 9(x), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(b)(3), (c)(7), (d)(6), 104 Stat. 5040–5042; Oct. 25, 1994, Pub. L. 103–416, title I, § 103(a), 108 Stat. 4307.)

REFERENCES IN TEXT

Section 317(a) and (b) of the Nationality Act of 1940, referred to in subsecs. (a) and (c)(1), which was classified to section 717(a) and (b) of this title, was repealed by section 403(a)(42) of act June 27, 1952. See subsecs. (a) and (c) of this section.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–416 added subsec. (d).

1990—Subsec. (a)(1). Pub. L. 101–649, § 407(b)(3), (c)(7), (d)(6)(A)(i), substituted ''State or district of the Service in the United States'' for ''State'' and ''application'' for ''petition'' and inserted ''and'' at end.

Subsec. (a)(2). Pub. L. 101–649, § 407(c)(7), (d)(6)(A)(ii), substituted references to applicant and application for

references to petitioner and petition, and substituted period for semicolon at end.

Subsec. (a)(3), (4). Pub. L. 101–649, § 407(d)(6)(A)(iii), struck out pars. (3) and (4) which related to filing of petition and hearing on petition.

Subsec. (b). Pub. L. 101–649, § 407(c)(7), (d)(6)(B), substituted references to application for references to petition wherever appearing, and ''Attorney General'' for ''naturalization court''.

Subsec. (c)(1). Pub. L. 101–649, § 407(c)(7), substituted ''an application'' for ''a petition''.

Subsec. (c)(2). Pub. L. 101–649, § 407(d)(6)(C)(i), substituted ''the Attorney General or the judge or clerk of a court described in section 1421(b) of this title'' for ''the judge or clerk of a naturalization court''.

Subsec. (c)(3). Pub. L. 101–649, § 407(d)(6)(C)(ii), substituted ''court, or the Attorney General'' for ''or naturalization court'' in two places.

1988—Subsec. (a)(4). Pub. L. 100–525 substituted ''has'' for ''and the witnesses have''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 103(b) of Pub. L. 103–416 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 120 days after the date of the enactment of this Act [Oct. 25, 1994].''

ITALIAN ELECTIONS; NATURALIZATION OF FORMER CITIZENS WHO VOTED IN CERTAIN FORMER ELECTIONS

Section 1 of act Aug. 16, 1951, as amended by section 402(j) of act June 27, 1952, provided: ''That a person who, while a citizen of the United States, has lost citizenship of the United States solely by reason of having voted in a political election or plebiscite held in Italy between January 1, 1946, and April 18, 1948, inclusive, and who has not subsequent to such voting committed any act which, had he remained a citizen, would have operated to expatriate him, may be naturalized by taking, prior to two years from the enactment of this Act [June 27, 1952], before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, the oath required by section 337 of the Immigration and Nationality Act [section 1448 of this title]. Certified copies of such oath shall be sent by such diplomatic or consular officer or such court to the Department of State and to the Department of Justice. Such person shall have, from and after naturalization under this section, the same citizenship status as that which existed immediately prior to its loss: *Provided,* That no such person shall be eligible to take the oath required by section 337 of the Immigration and Nationality Act [section 1448 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. The illegal or fraudulent procurement of naturalization under this amendment shall be subject to cancellation in the same manner as provided in section 340 of the Immigration and Nationality Act [section 1451 of this title].''

JAPANESE ELECTIONS; NATURALIZATION OF FORMER CITIZENS WHO VOTED IN CERTAIN FORMER ELECTIONS

Act July 20, 1954, ch. 553, 68 Stat. 495, provided: ''That a person who has lost United States citizenship solely by reason of having voted in any political election or plebiscite held in Japan between September 2, 1945, and April 27, 1952, inclusive, and who has not, subsequent to such voting, committed any act which, had he remained a citizen, would have operated to expatriate him, and is not otherwise disqualified from becoming a citizen by reason of sections 313 or 314, or the third sentence of section 318 of the Immigration and Nationality Act [sections 1424, 1425, 1429 of this title], may be naturalized by taking, prior to two years after the date of the enactment of this Act [July 20, 1954], before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title] or before any diplomatic or consular officer of the United States abroad, the applicable oath prescribed by section 337 of such Act [section 1448 of this title]. Certified copies of such oath shall be sent by such court or such diplomatic or consular officer to the Department of State and to the Department of Justice. Such oath of allegiance shall be entered in the records of the appropriate naturalization court, embassy, legation, or consulate, and upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the naturalization court, embassy, legation or consulate, shall be delivered to such person at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States. Any such person shall have, from and after naturalization under this Act, the same citizenship status as that which existed immediately prior to its loss: *Provided,* That no such person shall be eligible to take the oath prescribed by section 337 of the Immigration and Nationality Act [section 1448 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. Naturalization procured under this Act shall be subject to revocation as provided in section 340 of the Immigration and Nationality Act [section 1451 of this title], and subsection (f) of that section [section 1451(f) of this title] shall apply to any person claiming United States citizenship through the naturalization of an individual under this Act.''

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Consular officer, see section 1101(a)(9) of this title.
- Ineligible to citizenship, see section 1101(a)(19) of this title.
- National, see section 1101(a)(21) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Person of good moral character, see section 1101(f) of this title.
- Residence, see section 1101(a)(33) of this title.
- Spouse, see section 1101(a)(35) of this title.
- United States, see section 1101(a)(38) of this title.
- Unmarried, see section 1101(a)(39) of this title.

Former citizens losing citizenship by entering armed forces of foreign countries during World War II, see section 1438 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1436. Nationals but not citizens; residence within outlying possessions

A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified, may, if he becomes a resident of any State, be naturalized upon compliance with the applicable requirements of this subchapter, except that in applications for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of this subchapter shall include residence and physical presence within any of the outlying possessions of the United States.

(June 27, 1952, ch. 477, title III, ch. 2, § 325, 66 Stat. 248; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(8), 104 Stat. 5041.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''applications'' for ''petitions''.

CROSS REFERENCES

Definition of the term—
National, see section 1101(a)(21) of this title.
Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

§ 1437. Resident Philippine citizens excepted from certain requirements

Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) entered the United States prior to May 1, 1934, and (3) has, since such entry, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of applying for naturalization under this subchapter.

(June 27, 1952, ch. 477, title III, ch. 2, § 326, 66 Stat. 248; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(9), 104 Stat. 5041.)

AMENDMENTS

1990—Pub. L. 101–649 substituted ''applying'' for ''petitioning''.

CROSS REFERENCES

Definition of the term—
Entry, see section 1101(a)(13) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

§ 1438. Former citizens losing citizenship by entering armed forces of foreign countries during World War II

(a) Requirements; oath; certified copies of oath

Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of subchapter III of this chapter, except section 1427(a) of this title, and except as otherwise provided in subsection (b) of this section, be naturalized by taking before the Attorney General or before a court described in section 1421(b) of this title the oath required by section 1448 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice and by the Attorney General to the Secretary of State.

(b) Exceptions

No person shall be naturalized under subsection (a) of this section unless he—

(1) is, and has been for a period of at least five years immediately preceding taking the oath required in subsection (a) of this section, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and

(2) has been lawfully admitted to the United States for permanent residence and intends to reside permanently in the United States.

(c) Status

Any person naturalized in accordance with the provisions of this section, or any person who was naturalized in accordance with the provisions of section 323 of the Nationality Act of 1940, shall have, from and after such naturalization, the status of a native-born, or naturalized, citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein, or in any other provision of law, shall be construed as conferring United States citizenship retroactively upon any such person during any period in which such person was not a citizen.

(d) Span of World War II

For the purposes of this section, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

(e) Inapplicability to certain persons

This section shall not apply to any person who during World War II served in the armed forces of a country while such country was at war with the United States

(June 27, 1952, ch. 477, title III, ch. 2, § 327, 66 Stat. 248; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(d)(7), 104 Stat. 5042.)

REFERENCES IN TEXT

Section 323 of the Nationality Act of 1940, referred to in subsec. (c), which was classified to section 723 of this title, was repealed by section 403(a)(42) of act June 27, 1952. See subsec. (a) of this section.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649 substituted ''the Attorney General or before a court described in section 1421(b) of this title'' for ''any naturalization court specified in section 1421(a) of this title'' and inserted ''and by the Attorney General to the Secretary of State'' before period at end.

CROSS REFERENCES

Definition of the term—
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Person of good moral character, see section 1101(f) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.
Former citizens regaining citizenship, see section 1435 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1439. Naturalization through service in the armed forces

(a) Requirements

A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating three years, and, who, if separated from such service, was

never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the State or district of the Service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within six months after the termination of such service.

(b) Exceptions

A person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) no residence within a State or district of the Service in the United States shall be required;

(2) notwithstanding section 1429 of this title insofar as it relates to deportability, such applicant may be naturalized immediately if the applicant be then actually in the Armed Forces of the United States, and if prior to the filing of the application, the applicant shall have appeared before and been examined by a representative of the Service;

(3) the applicant shall furnish to the Attorney General, prior to any hearing upon his application, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than honorable. The certificate or certificates herein provided for shall be conclusive evidence of such service and discharge.

(c) Periods when not in service

In the case such applicant's service was not continuous, the applicant's residence in the United States and State or district of the Service in the United States, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such application between the periods of applicant's service in the Armed Forces, shall be alleged in the application filed under the provisions of subsection (a) of this section, and proved at any hearing thereon. Such allegation and proof shall also be made as to any period between the termination of applicant's service and the filing of the application for naturalization.

(d) Residence requirements

The applicant shall comply with the requirements of section 1427(a) of this title, if the termination of such service has been more than six months preceding the date of filing the application for naturalization, except that such service within five years immediately preceding the date of filing such application shall be considered as residence and physical presence within the United States.

(e) Moral character

Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 1427(a) of this title.

(June 27, 1952, ch. 477, title III, ch. 2, § 328, 66 Stat. 249; Oct. 24, 1968, Pub. L. 90–633, § 5, 82 Stat. 1344; Dec. 29, 1981, Pub. L. 97–116, § 15(e), 95 Stat. 1619; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(b)(4), (c)(10), (d)(8), 104 Stat. 5040–5042; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(c), 105 Stat. 1750.)

AMENDMENTS

1991—Subsecs. (b), (c). Pub. L. 102–232 amended directory language of Pub. L. 101–649, § 407(d)(8). See 1990 Amendment notes below.

1990—Subsec. (a). Pub. L. 101–649, § 407(b)(4)(A), (c)(10), substituted "State or district of the Service in the United States" for "State", "for at least three months" for "for at least six months", and references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b). Pub. L. 101–649, § 407(b)(4)(B), (c)(10), (d)(8), as amended by Pub. L. 102–232, substituted "within a State or district of the Service in the United States" for "within the jurisdiction of the court" in par. (1), "any hearing" for "the final hearing" in par. (3), and references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (c). Pub. L. 101–649, § 407(b)(4)(C), (c)(10), (d)(8), as amended by Pub. L. 102–232, substituted "State or district of the Service in the United States" for "State", "any hearing" for "the final hearing", and references to applicant's and application for references to petitioner's and petition wherever appearing.

Subsec. (d). Pub. L. 101–649, § 407(c)(10), substituted references to applicant and application for references to petitioner and petition wherever appearing.

1981—Subsec. (b)(2). Pub. L. 97–116 struck out "and section 1447(c) of this title" after "relates to deportability" and "and the witnesses" after "petition, the petitioner".

1968—Subsec. (b)(2). Pub. L. 90–633 inserted reference to section 1429 of this title as it relates to deportability.

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 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.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.

Naturalization, see section 1101(a)(23) of this title.

Person of good moral character, see section 1101(f) of this title.

Residence, see section 1101(a)(33) of this title.

Service, see section 1101(a)(34) of this title.

United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1429 of this title.

§ 1440. Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities

(a) Requirements

Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as of the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of an application for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) Exceptions

A person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 1429 of this title as they relate to deportability and the provisions of section 1442 of this title;

(2) no period of residence or specified period of physical presence within the United States or any State or district of the Service in the United States shall be required; and

(3) service in the military, air or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the applicant served or is serving, which shall state whether the applicant served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions.

(c) Revocation

Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

(June 27, 1952, ch. 477, title III, ch. 2, § 329, 66 Stat. 250; Sept. 26, 1961, Pub. L. 87–301, § 8, 75 Stat. 654; Oct. 24, 1968, Pub. L. 90–633, §§ 1, 2, 6, 82 Stat. 1343, 1344; Dec. 29, 1981, Pub. L. 97–116, § 15(a), 95 Stat. 1619; Oct. 24, 1988, Pub. L. 100–525, § 9(y), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(b)(5), (c)(11), 104 Stat. 5040, 5041; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(b), 105 Stat. 1749.)

REFERENCES IN TEXT

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

AMENDMENTS

1991—Subsecs. (a), (b). Pub. L. 102–232 made technical correction to directory language of Pub. L. 101–649, § 407(c)(11). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(11), as amended by Pub. L. 102–232, substituted ''an application'' for ''a petition''.

Subsec. (b). Pub. L. 101–649, § 407(c)(11), as amended by Pub. L. 102–232, substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b)(2). Pub. L. 101–649, § 407(b)(5)(A), substituted ''State or district of the Service in the United States'' for ''State'' and inserted ''and'' at end.

Subsec. (b)(3), (4). Pub. L. 101–649, § 407(b)(5)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which authorized filing of petition in any court having naturalization jurisdiction.

1988—Subsec. (d). Pub. L. 100–525 struck out subsec. (d) which read as follows: ''The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under section 701 of the Nationality Act of 1940, as amended (56 Stat. 182, 58 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section.''

1981—Subsec. (b)(5). Pub. L. 97–116 struck out par. (5) which provided that, notwithstanding section 1447(c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses have appeared before and been examined by a representative of the Service.

1968—Subsec. (a). Pub. L. 90–633, § 1, added the Vietnam hostilities and any subsequent period of military operations involving armed conflict with a hostile foreign force as periods during which a person may be naturalized through service in active duty status.

Subsec. (b)(1). Pub. L. 90–633, § 6, inserted reference to provisions of section 1429 of this title as they relate to deportability.

Subsec. (b)(4). Pub. L. 90–633, § 2, inserted reference to the period of the Vietnam hostilities and to any other subsequent period which the President by Executive order designates as a period in which the Armed Forces of the United States were engaged in military operations involving armed conflict with a hostile foreign force.

1961—Subsecs. (a), (b)(4). Pub. L. 87–301 inserted ''or during a period beginning June 25, 1950, and ending July 1, 1955''.

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 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.

NATURALIZATION OF NATIVES OF PHILIPPINES THROUGH CERTAIN ACTIVE-DUTY SERVICE DURING WORLD WAR II

Pub. L. 102–395, title I, § 113, Oct. 6, 1992, 106 Stat. 1844, provided that:

''(a) WAIVER.—(1) For purposes of the naturalization of natives of the Philippines under section 405 of the Immigration Act of 1990 [Pub. L. 101–649, set out below], notwithstanding any other provision of law—

''(A) the processing of applications for naturalization, including necessary interviews, shall be conducted in the Philippines by employees of the Immigration and Naturalization Service designated pursuant to section 335(b) of the Immigration and Nationality Act of 1952, as amended [8 U.S.C. 1446(b)]; and

''(B) oaths of allegiance shall be taken in the Philippines by employees of the Immigration and Naturalization Service designated pursuant to section 335(b) of the Immigration and Nationality Act of 1952, as amended.

''(2) Notwithstanding subsection (a)(1), applications for naturalization including necessary interviews may continue to be processed, and oaths of allegiance may continue to be taken in the United States.

''(3) The Attorney General shall prescribe such regulations as may be necessary to carry out this subsection.

''(b) TREATMENT OF OATHS OF ALLEGIANCE.—Records of oaths of allegiance taken in accordance with subsection (a)(1)(B) shall be entered in the permanent records of the Attorney General.

''(c) EFFECTIVE DATE.—The provisions of this section shall become effective 120 days from the date of enactment of this Act [Oct. 6, 1992].

''(d) EXTENSION OF APPLICATION PERIOD.—The provisions of this section shall apply to natives of the Philippines who applied for naturalization under section 405 of the Immigration Act of 1990 [Pub. L. 101–649, set out below] and who apply for naturalization within 2 years after the effective date of this section.

''(e) TERMINATION DATE.—This section shall cease to be effective 3 years after its effective date.''

Section 405 of Pub. L. 101–649, as amended by Pub. L. 103–416, title I, § 104(d), Oct. 25, 1994, 108 Stat. 4308, provided that:

''(a) WAIVER OF CERTAIN REQUIREMENTS.—(1) Clauses (1) and (2) of section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) shall not apply to the naturalization of any person—

''(A) who was born in the Philippines and who was residing in the Philippines before the service described in subparagraph (B);

''(B) who served honorably—

''(i) in an active-duty status under the command of the United States Armed Forces in the Far East, or

''(ii) within the Philippine Army, the Philippine Scouts, or recognized guerrilla units,

at any time during the period beginning September 1, 1939, and ending December 31, 1946;

''(C) who is otherwise eligible for naturalization under section 329 of such Act; and

''(D) who applies for naturalization during the 2-year period beginning on the date of the enactment of this Act [Nov. 29, 1990].

''(2) Subject to subsection (c), in applying section 329 of the Immigration and Nationality Act, service described in paragraph (1)(B) is considered to be honorable service in an active-duty status in the military, air, or naval forces of the United States.

''(b) [Repealed. Pub. L. 103–416, title I, § 104(d), Oct. 25, 1994, 108 Stat. 4308.]

''(c) STATUTORY CONSTRUCTION.—The enactment of this section shall not be construed as affecting the rights, privileges, or benefits of a person described in subsection (a)(1) under any provision of law (other than the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]) by reason of the service of such person or the service of any other person under the command of the United States Armed Forces.''

[Section 405 of Pub. L. 101–649 effective May 1, 1991, without regard to whether regulations to implement such section have been issued by such date, see section 408(f) of Pub. L. 101–649, set out in an Effective Date of 1990 Amendment; Savings Provision note under section 1421 of this title.]

NATURALIZATION OF ALIENS ENLISTED IN REGULAR ARMY

Act June 30, 1950, ch. 443, § 4, 64 Stat. 316, as amended June 27, 1952, ch. 477, title IV, § 402(e), 66 Stat. 276, provided that: ''Notwithstanding the dates or periods of service specified and designated in section 329 of the Immigration and Nationality Act [this section], the provisions of that section are applicable to aliens enlisted or reenlisted pursuant to the provisions of this Act and who have completed five or more years of military service, if honorably discharged therefrom. Any alien enlisted or reenlisted pursuant to the provisions of this Act who subsequently enters the United States, American Samoa, Swains Island, or the Canal Zone, pursuant to military orders shall, if otherwise qualified for citizenship, and after completion of five or more years of military service, if honorably discharged therefrom, be deemed to have been lawfully admitted to the United States for permanent residence within the meaning of such section 329(a) [subsection (a) of this section].''

EX. ORD. NO. 12081. TERMINATION OF EXPEDITIOUS NATURALIZATION BASED ON MILITARY SERVICE

Ex. Ord. No. 12081, Sept. 18, 1978, 43 F.R. 42237, provided:

By the authority vested in me as President of the United States of America by Section 329 of the Immigration and Nationality Act, as amended by Sections 1 and 2 of the Act of October 24, 1968 (82 Stat. 1343; 8 U.S.C. 1440), and by the authority of Section 3 of that Act of October 24, 1968 (82 Stat. 1344; 8 U.S.C. 1440e), it is hereby ordered that the statutory period of Vietnam hostilities which began on February 28, 1961, shall be deemed to have terminated on October 15, 1978, for the purpose of ending the period in which active-duty service in the Armed Forces qualifies for certain exemp-

tions from the usual requirements for naturalization, including length of residence and fees.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12582

Ex. Ord. No. 12582, Feb. 2, 1987, 52 F.R. 3395, which provided for expedited naturalization for aliens and noncitizens who served in the Armed Forces in the Grenada campaign by making them eligible in accordance with statutory exceptions in section 1440(b) of this title, was revoked, effective Feb. 2, 1987, by Ex. Ord. No. 12913, May 2, 1994, 59 F.R. 23115, such revocation not intended to affect status of anyone who was naturalized pursuant to terms of that order prior to the date of publication of Ex. Ord. No. 12582 in the Federal Register (May 4, 1994).

EX. ORD. NO. 12939. EXPEDITED NATURALIZATION OF ALIENS AND NONCITIZEN NATIONALS WHO SERVED IN ACTIVE-DUTY STATUS DURING PERSIAN GULF CONFLICT

Ex. Ord. No. 12939, Nov. 22, 1994, 59 F.R. 61231, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1440 of title 8, United States Code, and in order to provide expedited naturalization for aliens and noncitizen nationals who served in an active-duty status in the Armed Forces of the United States during the period of the Persian Gulf Conflict, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, the period of Persian Gulf Conflict military operations in which the Armed Forces of the United States were engaged in armed conflict with a hostile force commenced on August 2, 1990, and terminated on April 11, 1991. Those persons serving honorably in active-duty status in the Armed Forces of the United States during this period are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 1440(b) of title 8, United States Code.

WILLIAM J. CLINTON.

CROSS REFERENCES

Definition of the term—
- Alien, see section 1101(a)(3) of this title.
- Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
- National of the United States, see section 1101(a)(22) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Residence, see section 1101(a)(33) of this title.
- Service, see section 1101(a)(34) of this title.
- United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1429, 1440–1, 1440e, 1451 of this title.

§ 1440–1. Posthumous citizenship through death while on active-duty service in armed forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities

(a) Permitting granting of posthumous citizenship

Notwithstanding any other provision of this subchapter, the Attorney General shall provide, in accordance with this section, for the granting of posthumous citizenship at the time of death to a person described in subsection (b) of this section if the Attorney General approves an application for that posthumous citizenship under subsection (c) of this section.

(b) Noncitizens eligible for posthumous citizenship

A person referred to in subsection (a) of this section is a person who, while an alien or a noncitizen national of the United States—

(1) served honorably in an active-duty status in the military, air, or naval forces of the United States during any period described in the first sentence of section 1440(a) of this title,

(2) died as a result of injury or disease incurred in or aggravated by that service, and

(3) satisfied the requirements of clause (1) or (2) of the first sentence of section 1440(a) of this title.

The executive department under which the person so served shall determine whether the person satisfied the requirements of paragraphs (1) and (2).

(c) Requests for posthumous citizenship

A request for the granting of posthumous citizenship to a person described in subsection (b) of this section may be filed on behalf of the person only by the next-of-kin (as defined by the Attorney General) or another representative (as defined by the Attorney General). The Attorney General shall approve such a request respecting a person if—

(1) the request is filed not later than 2 years after—

(A) March 6, 1990, or

(B) the date of the person's death, whichever date is later;

(2) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b) of this section; and

(3) the Attorney General finds that the person satisfied the requirement of subsection (b)(3) of this section.

(d) Documentation of posthumous citizenship

If the Attorney General approves such a request to grant a person posthumous citizenship, the Attorney General shall send to the individual who filed the request a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person's death.

(e) No benefits to survivors

Nothing in this section or section 1430(d) of this title shall be construed as providing for any benefits under this chapter for any spouse, son, daughter, or other relative of a person granted posthumous citizenship under this section.

(June 27, 1952, ch. 477, title III, ch. 2, § 329A, as added Mar. 6, 1990, Pub. L. 101–249, § 2(a), 104 Stat. 94.)

§§ 1440a to 1440d. Omitted

CODIFICATION

Sections, act June 30, 1953, ch. 162, §§ 1–4, 67 Stat. 108–110, which authorized naturalization of persons who served in the Armed Forces after June 29, 1950, and not later than July 1, 1955, were omitted as obsolete, since the provisions of section 1 of act June 30, 1953, required

the petition for naturalization to be filed not later than December 31, 1955. See sections 1440 and 1440e of this title.

§ 1440e. Exemption from naturalization fees for aliens naturalized through service during Vietnam hostilities or other subsequent period of military hostilities; report by clerks of courts to Attorney General

Notwithstanding any other provision of law, no clerk of a United States court shall charge or collect a naturalization fee from an alien who has served in the military, air, or naval forces of the United States during a period beginning February 28, 1961, and ending on the date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who is applying for naturalization during such periods under section 1440 of this title, for filing a petition for naturalization or issuing a certificate of naturalization upon his admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this section shall be made to the Attorney General as in the case of other reports required of clerks of courts by this subchapter.

(Pub. L. 90–633, § 3, Oct. 24, 1968, 82 Stat. 1344.)

CODIFICATION

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

§ 1441. Constructive residence through service on certain United States vessels

Any periods of time during all of which a person who was previously lawfully admitted for permanent residence has served honorably or with good conduct, in any capacity other than as a member of the Armed Forces of the United States, (A) on board a vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or (B) on board a vessel whose home port is in the United States, and (i) which is registered under the laws of the United States, or (ii) the full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States, shall be deemed residence and physical presence within the United States within the meaning of section 1427(a) of this title, if such service occurred within five years immediately preceding the date such person shall file an application for naturalization. Service on vessels described in clause (A) of this section shall be proved by duly authenticated copies of the records of the executive departments or agency having custody of the records of such service. Service on vessels described in clause (B) of this section may be proved by certificates from the masters of such vessels.

(June 27, 1952, ch. 477, title III, ch. 2, § 330, 66 Stat. 251; Oct. 24, 1988, Pub. L. 100–525, § 9(z), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(12), 104 Stat. 5041; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(m)(5), 105 Stat. 1750.)

AMENDMENTS

1991—Pub. L. 102–232 substituted ''of this section'' for ''of this subsection'' in two places.

1990—Pub. L. 101–649 substituted ''an application'' for ''a petition''.

1988—Pub. L. 100–525 designated provisions of former par. (1) of subsec. (a) as entire section, and struck out former pars. (2) and (3) and subsec. (b) which read as follows:

''(2) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person had served honorably or with good conduct for an aggregate period of five years on any vessel described in section 325(a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 1427(a) of this title, if such petition is filed within one year from the effective date of this chapter. Notwithstanding the provisions of section 1429 of this title, a person entitled to claim the exemptions contained in this paragraph shall not be required to establish a lawful admission for permanent residence.

''(3) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person not within the provisions of paragraph (2) of this subsection had, prior to September 23, 1950, served honorably or with good conduct on any vessel described in section 325(a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and was so serving on September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 1427(a) of this title, if such person at any time prior to filing his petition for naturalization shall have been lawfully admitted to the United States for permanent residence, and if such petition is filed on or before September 23, 1955.

''(b) Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this chapter, be naturalized upon compliance with the applicable provisions of the naturalization laws in effect upon the date such petition was filed: *Provided*, That any such person shall be subject to the provisions of section 1424 of this title and to those provisions of section 1429 of this title which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

CROSS REFERENCES

Definition of the term—

Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.

Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

§ 1442. Alien enemies

(a) Naturalization under specified conditions

An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's application for naturalization shall be pending at the beginning of the state of war and the applicant is otherwise entitled to admission to citizenship.

(b) Procedure

An alien embraced within this section shall not have his application for naturalization considered or heard except after 90 days' notice to the Attorney General to be considered at the examination or hearing, and the Attorney General's objection to such consideration shall cause the application to be continued from time to time for so long as the Attorney General may require.

(c) Exceptions from classification

The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have an application for naturalization pending at the beginning of the state of war, except such alien enemy from the classification of alien enemy for the purposes of this subchapter, and thereupon such alien shall have the privilege of filing an application for naturalization.

(d) Effect of cessation of hostilities

An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended.

(e) Apprehension and removal

Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien.

(June 27, 1952, ch. 477, title III, ch. 2, § 331, 66 Stat. 252; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(13), (d)(9), (e)(2), 104 Stat. 5041, 5042, 5046.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(13), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b). Pub. L. 101–649, § 407(d)(9), substituted ''considered or heard except after 90 days' notice to the Attorney General to be considered at the examination or hearing, and the Attorney General's objection to such consideration shall cause the application to be continued'' for ''called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General's objection to such final hearing shall cause the petition to be continued''.

Pub. L. 101–649, § 407(c)(13), substituted ''application'' for ''petition'' after ''have his''.

Subsec. (c). Pub. L. 101–649, § 407(c)(13), substituted ''an application'' for ''a petition'' wherever appearing.

Subsec. (d). Pub. L. 101–649, § 407(e)(2), struck out at end ''Notwithstanding the provisions of section 405(b) of this Act, this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this chapter and which is still pending on that date.''

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1440 of this title.

§ 1443. Administration

(a) Rules and regulations governing examination of applicants

The Attorney General shall make such rules and regulations as may be necessary to carry into effect the provisions of this Part and is authorized to prescribe the scope and nature of the examination of applicants for naturalization as to their admissibility to citizenship. Such examination shall be limited to inquiry concerning the applicant's residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, ability to read, write, and speak English, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

(b) Instruction in citizenship

The Attorney General is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing citizenship textbooks to such candidates as are receiving instruction in preparation for citizenship within or under the supervision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and national organizations, including those concerned with vocational education.

(c) Prescription of forms

The Attorney General shall prescribe and furnish such forms as may be required to give effect to the provisions of this Part, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

(d) Administration of oaths and depositions

Employees of the Service may be designated by the Attorney General to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Attorney General may, in his discre-

tion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

(e) Issuance of certificate of naturalization or citizenship

A certificate of naturalization or of citizenship issued by the Attorney General under the authority of this subchapter shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and outlying possession of the United States, as a certificate of naturalization or of citizenship issued by a court having naturalization jurisdiction.

(f) Copies of records

Certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this chapter and in all cases and proceedings in which the originals thereof might be admissible as evidence.

(g) Furnished quarters for photographic studios

The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters, without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of persons seeking to comply with requirements under the immigration and nationality laws. Such studio shall be under the supervision of the Attorney General.

(h) Public education regarding naturalization benefits

In order to promote the opportunities and responsibilities of United States citizenship, the Attorney General shall broadly distribute information concerning the benefits which persons may receive under this subchapter and the requirements to obtain such benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations. There are authorized to be appropriated (for each fiscal year beginning with fiscal year 1991) such sums as may be necessary to carry out this subsection.

(June 27, 1952, ch. 477, title III, ch. 2, § 332, 66 Stat. 252; Nov. 29, 1990, Pub. L. 101–649, title IV, §§ 406, 407(d)(10), 104 Stat. 5040, 5042; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(m)(6), 105 Stat. 1750.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232 substituted ''applicants'' for ''petitioners'' in first sentence.

1990—Subsec. (a). Pub. L. 101–649, § 407(d)(10), struck out ''for the purpose of making appropriate recommendations to the naturalization courts'' before period at end of first sentence and struck out second sentence which read as follows: ''Such examination, in the discretion of the Attorney General, and under such rules and regulations as may be prescribed by him, may be conducted before or after the applicant has filed his petition for naturalization.''

Subsec. (h). Pub. L. 101–649, § 406, added subsec. (h).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

CROSS REFERENCES

Citizenship textbooks, publication and distribution; use of naturalization fees, see section 1457 of this title.

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.

Person of good moral character, see section 1101(f) of this title.

Residence, see section 1101(a)(33) of this title.

Service, see section 1101(a)(34) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1457 of this title.

§ 1444. Photographs; number

(a) Three identical photographs of the applicant shall be signed by and furnished by each applicant for naturalization or citizenship. One of such photographs shall be affixed by the Attorney General to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Three identical photographs of the applicant shall be furnished by each applicant for—

(1) a record of lawful admission for permanent residence to be made under section 1259 of this title;

(2) a certificate of derivative citizenship;

(3) a certificate of naturalization or of citizenship;

(4) a special certificate of naturalization;

(5) a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed;

(6) a new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had his name changed by order of a court of competent jurisdiction or by marriage; and

(7) a declaration of intention.

One such photograph shall be affixed to each such certificate issued by the Attorney General and one shall be affixed to the copy of such certificate retained by the Service.

(June 27, 1952, ch. 477, title III, ch. 2, § 333, 66 Stat. 253; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(14), (d)(11), 104 Stat. 5041, 5042; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(w), 108 Stat. 4318.)

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–416 substituted ''1259'' for ''1259(a)''.

1990—Subsec. (a). Pub. L. 101–649 substituted ''applicant'' for ''petitioner'' after ''by each'', and ''Attorney General'' for ''clerk of the court''.

EFFECTIVE DATE OF 1994 AMENDMENT

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

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
Naturalization, see section 1101(a)(23) of this title.
Service, see section 1101(a)(34) of this title.

Photographic studio for benefit of aliens, see section 1443 of this title.

§ 1445. Application for naturalization; declaration of intention

(a) Evidence and form

An applicant for naturalization shall make and file with the Attorney General a sworn application in writing, signed by the applicant in the applicant's own handwriting if physically able to write, which application shall be on a form prescribed by the Attorney General and shall include averments of all facts which in the opinion of the Attorney General may be material to the applicant's naturalization, and required to be proved under this subchapter. In the case of an applicant subject to a requirement of continuous residence under section 1427(a) or 1430(a) of this title, the application for naturalization may be filed up to 3 months before the date the applicant would first otherwise meet such continuous residence requirement.

(b) Who may file

No person shall file a valid application for naturalization unless he shall have attained the age of eighteen years. An application for naturalization by an alien shall contain an averment of lawful admission for permanent residence.

(c) Hearings

Hearings under section 1447(a) of this title on applications for naturalization shall be held at regular intervals specified by the Attorney General.

(d) Filing of application

Except as provided in subsection (e) of this section, an application for naturalization shall be filed in the office of the Attorney General.

(e) Substitute filing place and administering oath other than before Attorney General

A person may file an application for naturalization other than in the office of the Attorney General, and an oath of allegiance administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which—

(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.

(f) Declaration of intention

An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing an application for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this chapter or any other Act.

(June 27, 1952, ch. 477, title III, ch. 2, § 334, 66 Stat. 254; Dec. 29, 1981, Pub. L. 97–116, § 15(b), 95 Stat. 1619; Nov. 29, 1990, Pub. L. 101–649, title IV, §§ 401(b), 407(c)(15), (d)(12), 104 Stat. 5038, 5041, 5042; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(d), (e), (m)(7), 105 Stat. 1750.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232, § 305(m)(7), struck out ", in duplicate," after "file with the Attorney General".

Pub. L. 102–232, § 305(e), made technical correction to directory language of Pub. L. 101–649, § 407(d)(12)(B). See 1990 Amendment note below.

Subsecs. (f), (g). Pub. L. 102–232, § 305(d), redesignated subsec. (g) as (f).

1990—Pub. L. 101–649, § 407(d)(12)(A), substituted "Application for naturalization; declaration of intention" for "Petition for naturalization" in section catchline.

Subsec. (a). Pub. L. 101–649, § 407(c)(15), (d)(12)(B), as amended by Pub. L. 102–232, § 305(e), substituted "with the Attorney General" for "in the office of the clerk of a naturalization court", "under this subchapter" for "upon the hearing of such petition", and "application" for "petition" wherever appearing.

Pub. L. 101–649, § 401(b), inserted at end "In the case of an applicant subject to a requirement of continuous residence under section 1427(a) or 1430(a) of this title, the application for naturalization may be filed up to 3 months before the date the applicant would first otherwise meet such continuous residence requirement."

Subsec. (b). Pub. L. 101–649, § 407(c)(15), (d)(12)(C), substituted "application" for "petition" in first sentence, and struck out "(1)" before "he shall have attained", "and (2) he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General" after "eighteen years", and "petition for" after "An application for".

Subsecs. (c) to (e). Pub. L. 101–649, § 407(d)(12)(F), added subsecs. (c) to (e) and struck out former subsecs. (c) to (e) which related to time to file, substitute filing place, and investigation into reasons for substitute filing place, respectively.

Subsecs. (f), (g). Pub. L. 101–649, § 407(c)(15), (d)(12)(D), (E), redesignated subsec. (f) as (g), substituted "An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General." for "Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe.", and substituted "an application" for "a petition" in last sentence.

1981—Subsec. (a). Pub. L. 97–116 struck out "and duly verified by two witnesses," after "able to write,".

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 305(d), (e) 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 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

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.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Lawfully admitted for permanent residence, see section 1101(a)(20) of this title.
National of the United States, see section 1101(a)(22) of this title.
Naturalization, see section 1101(a)(23) of this title.
Residence, see section 1101(a)(33) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.
Record of admission for permanent residence in the case of certain aliens who entered the United States prior to June 28, 1940, see section 1259 of this title.
Records of admission, see section 1230 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1423 of this title; title 20 section 955b; title 42 section 1881.

§ 1446. Investigation of applicants; examination of applications

(a) Waiver

Before a person may be naturalized, an employee of the Service, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person applying for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of his application for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) Conduct of examinations; authority of designees; record

The Attorney General shall designate employees of the Service to conduct examinations upon applications for naturalization. For such purposes any such employee so designated is authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any applicant for naturalization, to administer oaths, including the oath of the applicant for naturalization, and to require by subpena the attendance and testimony of witnesses, including applicant, before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of any district court of the United States; and any such court may, in the event of neglect or refusal to respond to a subpena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant 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. The record of the examination authorized by this subsection shall be admissible as evidence in any hearing conducted by an immigration officer under section 1447(a) of this title. Any such employee shall, at the examination, inform the applicant of the remedies available to the applicant under section 1447 of this title.

(c) Transmittal of record of examination

The record of the examination upon any application for naturalization may, in the discretion of the Attorney General be transmitted to the Attorney General and the determination with respect thereto of the employee designated to conduct such examination shall when made also be transmitted to the Attorney General.

(d) Determination to grant or deny application

The employee designated to conduct any such examination shall make a determination as to whether the application should be granted or denied, with reasons therefor.

(e) Withdrawal of application

After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General. In cases where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final order determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

(f) Transfer of application

An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer, the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.

(June 27, 1952, ch. 477, title III, ch. 2, § 335, 66 Stat. 255; Dec. 29, 1981, Pub. L. 97–116, § 15(c), 95 Stat. 1619; Oct. 24, 1988, Pub. L. 100–525, § 9(aa), (bb), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, §§ 401(c), 407(c)(16), (d)(13), 104 Stat. 5038, 5041, 5043; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(f), 105 Stat. 1750.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–232 substituted ''district court'' for ''District Court''.

1990—Pub. L. 101–649, § 407(d)(13)(A), substituted ''Investigation of applicants; examination of applications'' for ''Investigation of petitioners'' in section catchline.

Subsec. (a). Pub. L. 101–649, § 407(c)(16), (d)(13)(B), substituted ''Before a person may be naturalized'' for ''At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 1447(a) of this title'', ''applying'' for ''petitioning'', and ''application'' for ''petition''.

Subsec. (b). Pub. L. 101–649, § 407(c)(16), (d)(13)(C), substituted ''applications'' for ''petitions'' and ''applicant'' for ''petitioner'' wherever appearing, struck out ''preliminary'' before ''examinations'' and before ''examination'', struck out ''to any naturalization court and to make recommendations thereon to such court'' before period at end of first sentence, substituted ''any District Court of the United States'' for ''any court exercising naturalization jurisdiction as specified in section 1421 of this title'', and substituted ''hearing conducted by an immigration officer under section 1447(a) of this title'' for ''final hearing conducted by a naturalization court designated in section 1421 of this title''.

Pub. L. 101–649, § 401(c), inserted at end ''Any such employee shall, at the examination, inform the petitioner of the remedies available to the petitioner under section 1447 of this title.''

Subsec. (c). Pub. L. 101–649, § 407(c)(16), (d)(13)(D), struck out ''preliminary'' before ''examination'' wherever appearing, and substituted ''determination'' for ''recommendation'' and ''application'' for ''petition''.

Subsecs. (d) to (f). Pub. L. 101–649, § 407(d)(13)(E), amended subsecs. (d) to (f) generally, substituting provisions relating to determinations, withdrawal of application, and transfer of application, for provisions relating to recommendations, withdrawal of petition, and transfer of petition, respectively.

1988—Subsec. (d). Pub. L. 100–525, § 9(aa), substituted ''approves'' for ''approve'' in fourth sentence.

Subsec. (f)(2). Pub. L. 100–525, § 9(bb), struck out before period at end '', except that the court to which the petition is transferred may in its discretion, require the production of two credible United States citizen witnesses to testify as to the petitioner's qualifications for naturalization since the date of such transfer''.

1981—Subsec. (b). Pub. L. 97–116, § 15(c)(1), struck out ''and the oaths of petitioner's witnesses to the petition for naturalization'' after ''oath of the petitioner for naturalization''.

Subsec. (f). Pub. L. 97–116, § 15(c)(2), (3), redesignated subsec. (i) as (f) and struck out former subsec. (f) which required affidavits of at least two credible witnesses, citizens of the United States, concerning the residency and the good moral character, etc., of the petitioner.

Subsec. (g). Pub. L. 97–116, § 15(c)(2), struck out subsec. (g) which related to proof of residence at the hearing on the petition.

Subsec. (h). Pub. L. 97–116, § 15(c)(2), struck out subsec. (h) which related to satisfactory evidence as to good moral character, etc., at the hearing on the petition.

Subsec. (i). Pub. L. 97–116, § 15(c)(3), redesignated subsec. (i) as (f).

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 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.

CROSS REFERENCES

Contempts, see section 401 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.

Naturalization, see section 1101(a)(23) of this title.

Person of good moral character, see section 1101(f) of this title.

Residence, see section 1101(a)(33) of this title.

Service, see section 1101(a)(34) of this title.

United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1447 of this title.

§ 1447. Hearings on denials of applications for naturalization

(a) Request for hearing before immigration officer

If, after an examination under section 1446 of this title, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.

(b) Request for hearing before district court

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

(c) Appearance of Attorney General

The Attorney General shall have the right to appear before any immigration officer in any naturalization proceedings for the purpose of cross-examining the applicant and the witnesses produced in support of the application concerning any matter touching or in any way affecting the applicant's right to admission to citizenship, and shall have the right to call witnesses, including the applicant, produce evidence, and be heard in opposition to, or in favor of the granting of any application in naturalization proceedings.

(d) Subpena of witnesses

The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpena for the witnesses named by such applicant to appear upon the day set for the hearing, but in case such witnesses cannot be produced upon the hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. Such subpenas may be enforced in the same manner as subpenas under section 1446(b) of this title may be enforced.

(e) Change of name

It shall be lawful at the time and as a part of the administration by a court of the oath of allegiance under section 1448(a) of this title for the court, in its discretion, upon the bona fide prayer of the applicant included in an appropriate petition to the court, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

(June 27, 1952, ch. 477, title III, ch. 2, § 336, 66 Stat. 257; Dec. 5, 1969, Pub. L. 91–136, 83 Stat. 283; Dec. 29, 1981, Pub. L. 97–116, § 15(d), 95 Stat. 1619; Oct. 24, 1988, Pub. L. 100–525, § 9(cc), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV,

§ 407(c)(17), (d)(14), 104 Stat. 5041, 5044; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(g), (h), 105 Stat. 1750.)

AMENDMENTS

1991—Subsecs. (d), (e). Pub. L. 102–232, § 305(g), (h), amended Pub. L. 101–649, § 407(d)(14)(D)(i), (E)(ii), respectively. See 1990 Amendment note below.

1990—Pub. L. 101–649, § 407(d)(14)(A), amended section catchline generally.

Subsecs. (a), (b). Pub. L. 101–649, § 407(d)(14)(B), amended subsecs. (a) and (b) generally, substituting provisions relating to requests for hearing upon denial of application and failure to make determination, for provisions relating to holding of hearing in open court and exceptions to same, respectively.

Subsec. (c). Pub. L. 101–649, § 407(c)(17), (d)(14)(C), substituted ''immigration officer'' for ''court'' and references to applicant, applicant's, and application for references to petitioner, petitioner's, and petition wherever appearing.

Subsec. (d). Pub. L. 101–649, § 407(d)(14)(D)(i), as amended by Pub. L. 102–232, § 305(g), substituted ''immigration officer shall, if the applicant requests it at the time of filing the request for the hearing'' for ''clerk of court shall, if the petitioner requests it at the time for filing the petition for naturalization''.

Pub. L. 101–649, § 407(c)(17), (d)(14)(D)(ii), (iii), substituted ''applicant'' for ''petitioner'', struck out ''final'' before ''hearing'' wherever appearing, and inserted at end ''Such subpenas may be enforced in the same manner as subpenas under section 1446(b) of this title may be enforced.''

Subsec. (e). Pub. L. 101–649, § 407(d)(14)(E)(i), substituted ''administration by a court of the oath of allegiance under section 1448(a) of this title'' for ''naturalization of any person,''.

Pub. L. 101–649, § 407(d)(14)(E)(ii), as amended by Pub. L. 102–232, § 305(h), substituted ''included in an appropriate petition to the court'' for ''included in the petition for naturalization of such person''.

Pub. L. 101–649, § 407(c)(17), substituted ''applicant'' for ''petitioner''.

1988—Pub. L. 100–525 amended section catchline.

1981—Subsec. (a). Pub. L. 97–116, § 15(d)(1), struck out ''and the witnesses'' after ''such petition the petitioner''.

Subsec. (b). Pub. L. 97–116, § 15(d)(1), struck out ''and the witnesses'' after ''examination of the petitioner'' in two places.

Subsec. (c). Pub. L. 97–116, § 15(d)(2), (3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which prescribed a waiting period of thirty days after the filing of a petition for naturalization for the holding of a final hearing and permitted waiver of such period by the Attorney General if he determined that a waiver was in the public interest.

Subsec. (d). Pub. L. 97–116, § 15(3), (4), redesignated subsec. (e) as (d) and struck out provision permitting the substitution of witnesses if after the petition is filed any of the verifying witnesses appear to be not competent, provided the petitioner acted in good faith in producing such witness. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 97–116, § 15(d)(4), (5), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 97–116, § 15(d)(5), redesignated subsec. (f) as (e).

1969—Subsec. (c). Pub. L. 91–136 struck out requirement that Attorney General, as a prerequisite to waiver of the waiting period, make an affirmative finding that such waiver will promote the security of the United States, and further struck out the provision prohibiting the acquisition of citizenship by final oath within 60 days preceding a general election and prior to the tenth day following such election.

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 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.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.

Naturalization, see section 1101(a)(23) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1421, 1427, 1445, 1446 of this title; title 18 section 1429.

§ 1448. Oath of renunciation and allegiance

(a) Public ceremony

A person who has applied for naturalization shall, in order to be and before being admitted to citizenship, take in a public ceremony before the Attorney General or a court with jurisdiction under section 1421(b) of this title an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5)(A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be required to take an oath containing the substance of clauses (1) to (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the Attorney General that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) to (4) and clauses (5)(B) and (5)(C) of this subsection, and a person who shows by clear and convincing evidence to the satisfaction of the Attorney General that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of said clauses (1) to (4) and clause (5)(C). The term ''religious training and belief'' as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 1433 of this title the Attorney General may waive the taking of the oath if in the opinion of the Attorney General the child is unable to understand its meaning.

(b) Hereditary titles or orders of nobility

In case the person applying for naturalization has borne any hereditary title, or has been of

any of the orders of nobility in any foreign state, the applicant shall in addition to complying with the requirements of subsection (a) of this section, make under oath in the same public ceremony in which the oath of allegiance is administered, an express renunciation of such title or order of nobility, and such renunciation shall be recorded as a part of such proceedings.

(c) Expedited judicial oath administration ceremony

Notwithstanding section 1421(b) of this title, an individual may be granted an expedited judicial oath administration ceremony or administrative naturalization by the Attorney General upon demonstrating sufficient cause. In determining whether to grant an expedited judicial oath administration ceremony, a court shall consider special circumstances (such as serious illness of the applicant or a member of the applicant's immediate family, permanent disability sufficiently incapacitating as to prevent the applicant's personal appearance at the scheduled ceremony, developmental disability or advanced age, or exigent circumstances relating to travel or employment). If an expedited judicial oath administration ceremony is impracticable, the court shall refer such individual to the Attorney General who may provide for immediate administrative naturalization.

(d) Rules and regulations

The Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.

(June 27, 1952, ch. 477, title III, ch. 2, § 337, 66 Stat. 258; Dec. 29, 1981, Pub. L. 97–116, § 18(*o*), 95 Stat. 1621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(18), (d)(15), 104 Stat. 5041, 5044; Dec. 12, 1991, Pub. L. 102–232, title I, § 102(b)(2), title III, § 305(i), 105 Stat. 1736, 1750.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–232, § 102(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If the applicant is prevented by sickness or other disability from attending a public ceremony, the oath required to be taken by subsection (a) of this section may be taken at such place as the Attorney General may designate under section 1445(e) of this title.''

Pub. L. 102–232, § 305(i), struck out ''before'' after ''may be taken''.

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(18), (d)(15)(A), substituted ''applied'' for ''petitioned'' and ''applicant'' for ''petitioner'' in first sentence, ''in a public ceremony before the Attorney General or a court with jurisdiction under section 1421(b) of this title'' for ''in open court'', ''Attorney General'' for ''naturalization court'' wherever appearing in second and fourth sentences, and ''Attorney General'' for ''court'' before ''the child'' in fourth sentence.

Subsec. (b). Pub. L. 101–649, § 407(c)(18), (d)(15)(B), substituted ''applying'' for ''petitioning'', ''applicant'' for ''petitioner'', and ''in the same public ceremony in which the oath of allegiance is administered'' for ''in open court in the court in which the petition for naturalization is made'', and struck out ''in the court'' after ''shall be recorded''.

Subsec. (c). Pub. L. 101–649, § 407(c)(18), (d)(15)(C), substituted ''applicant'' for ''petitioner'', ''attending a public ceremony'' for ''being in open court'', and ''at such place as the Attorney General may designate under section 1445(e) of this title'' for ''a judge of the court at such place as may be designated by the court''.

Subsec. (d). Pub. L. 101–649, § 407(d)(15)(D), added subsec. (d).

1981—Subsec. (a). Pub. L. 97–116 substituted ''section 1433'' for ''section 1433 or 1434''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 102(b)(2) of Pub. L. 102–232 effective 30 days after Dec. 12, 1991, see section 102(c) of Pub. L. 102–232, set out as a note under section 1421 of this title.

Amendment by section 305(i) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 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.

CROSS REFERENCES

Definition of the term—
Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
Child, as used in this subchapter, see section 1101(c)(1) of this title.
Foreign state, see section 1101(a)(14) of this title.
Naturalization, see section 1101(a)(23) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1421, 1427, 1433, 1435, 1438, 1447, 1450 of this title.

§ 1449. Certificate of naturalization; contents

A person admitted to citizenship in conformity with the provisions of this subchapter shall be entitled upon such admission to receive from the Attorney General a certificate of naturalization, which shall contain substantially the following information: Number of application for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; location of the district office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance; statement that the Attorney General, having found that the applicant had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the applicant be admitted as a citizen of the United States of America; attestation of an immigration officer; and the seal of the Department of Justice.

(June 27, 1952, ch. 477, title III, ch. 2, § 338, 66 Stat. 259; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(c)(19), (d)(16), 104 Stat. 5041, 5045; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(j), 105 Stat. 1750; Oct. 25, 1994, Pub. L. 103–416, title I, § 104(a), title II, § 219(z)(3), 108 Stat. 4308, 4318.)

AMENDMENTS

1994—Pub. L. 103–416, § 219(z)(3), repealed Pub. L. 102–232, § 305(j)(1). See 1991 Amendment note below.

Pub. L. 103–416, § 104(a), struck out ''intends to reside permanently in the United States, except in cases fall-

ing within the provisions of section 1435(a) of this title,'' before ''had complied in''.

1991—Pub. L. 102–232, § 305(j)(2), substituted ''district'' for ''District'' before ''office of the Service''.

Pub. L. 102–232, § 305(j)(1), which made a technical correction to Pub. L. 101–649, § 407(d)(16)(C), which was unnecessary because the language sought to be corrected was already correct in Pub. L. 101–649 (see 1990 Amendment note below) was repealed by Pub. L. 103–416, § 219(z)(3). See Construction of 1994 Amendment note below.

1990—Pub. L. 101–649 substituted ''application'' for ''petition'' and ''applicant'' for ''petitioner'' in two places, struck out ''by a naturalization court'' after ''citizenship'', and substituted ''the Attorney General'' for ''the clerk of such court'', ''location of the District office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance'' for ''title, venue, and location of the naturalization court'', ''the Attorney General'' for ''the court'', and ''of an immigration officer; and the seal of the Department of Justice'' for ''of the clerk of the naturalization court; and seal of the court''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 104(e) of Pub. L. 103–416 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to persons admitted to citizenship on or after the date of enactment of this Act [Oct. 25, 1994].''

Section 219(z) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(3) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by 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.

CONSTRUCTION OF 1994 AMENDMENT

Section 219(z)(3) of Pub. L. 103–416 provided that: ''paragraph (1) of section 305(j) of such Act [Pub. L. 102–232, amending section 407(d)(16)(C) of Pub. L. 101–649] is repealed (and section 407(d)(16)(C) of the Immigration Act of 1990 [Pub. L. 101–649, amending this section] shall read as if such paragraph had not been enacted)''.

CROSS REFERENCES

Definition of the term—
National, see section 1101(a)(21) of this title.
Naturalization, see section 1101(a)(23) of this title.
Permanent, see section 1101(a)(31) of this title.
Residence, see section 1101(a)(33) of this title.
Unmarried, see section 1101(a)(39) of this title.

§ 1450. Functions and duties of clerks and records of declarations of intention and applications for naturalization

(a) The clerk of each court that administers oaths of allegiance under section 1448 of this title shall—

(1) deliver to each person administered the oath of allegiance by the court pursuant to section 1448(a) of this title the certificate of naturalization prepared by the Attorney General pursuant to section 1421(b)(2)(A)(ii) of this title,

(2) forward to the Attorney General a list of applicants actually taking the oath at each scheduled ceremony and information concerning each person to whom such an oath is administered by the court, within 30 days after the close of the month in which the oath was administered,

(3) forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of the court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General, and

(4) be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General and shall account to the Attorney General for them whenever required to do so.

No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively numbered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.

(June 27, 1952, ch. 477, title III, ch. 2, § 339, 66 Stat. 259; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(d)(17), 104 Stat. 5045; Dec. 12, 1991, Pub. L. 102–232, title I, § 102(b)(1), 105 Stat. 1735.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232, § 102(b)(1)(F), inserted sentence at end relating to return of defaced or injured certificates of naturalization to Attorney General.

Subsec. (a)(1). Pub. L. 102–232, § 102(b)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''issue to each person to whom such an oath is administered a document evidencing that such an oath was administered,''.

Subsec. (a)(2). Pub. L. 102–232, § 102(b)(1)(B), inserted ''a list of applicants actually taking the oath at each scheduled ceremony and'' after ''Attorney General''.

Subsec. (a)(3), (4). Pub. L. 102–232, § 102(b)(1)(C)–(E), added par. (4), redesignated former par. (4) as (3) and substituted '', and'' for period at end, and struck out former par. (3) which directed clerk to make and keep on file evidence for each document issued.

1990—Pub. L. 101–649 amended section generally, substituting provisions relating to functions and duties of clerks and records of declarations of intention and applications for naturalization, for provisions relating to functions and duties of clerks of naturalization courts.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective 30 days after Dec. 12, 1991, see section 102(c) of Pub. L. 102–232, set out as a note under section 1421 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 not applicable to functions and duties respecting petitions filed before Oct. 1, 1991, see section 408(c) of Pub. L. 101–649, set out as a note under section 1421 of this title.

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.

§ 1451. Revocation of naturalization

(a) Concealment of material evidence; refusal to testify

It shall be the duty of the United States attorneys for the respective districts, upon affidavit

showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: *Provided*, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

(b) Notice to party

The party to whom was granted the naturalization alleged to have been illegally procured or procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answers to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the States or the place where such suit is brought.

(c) Membership in certain organizations; prima facie evidence

If a person who shall have been naturalized after December 24, 1952 shall within five years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of section 1424 of this title, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

(d) Applicability to citizenship through naturalization of parent or spouse

Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship under the provisions of subsection (a) of this section on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under and by virtue of such naturalization of such parent or spouse, regardless of whether such person is residing within or without the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship. Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization under the provisions of subsection (c) of this section, or under the provisions of section 1440(c) of this title on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which would have been enjoyed by such person had there not been a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization, unless such person is residing in the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization.

(e) Citizenship unlawfully procured

When a person shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(f) Cancellation of certificate of naturalization

Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. The clerk of court shall

transmit a copy of such order and judgment to the Attorney General. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

(g) Applicability to certificates of naturalization and citizenship

The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this subchapter, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act.

(h) Power to correct, reopen, alter, modify, or vacate order

Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.

(June 27, 1952, ch. 477, title III, ch. 2, § 340, 66 Stat. 260; Sept. 3, 1954, ch. 1263, § 18, 68 Stat. 1232; Sept. 26, 1961, Pub. L. 87–301, § 18, 75 Stat. 656; Nov. 14, 1986, Pub. L. 99–653, § 17, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, § 9(dd), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, § 407(d)(18), 104 Stat. 5046; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(k), 105 Stat. 1750; Oct. 25, 1994, Pub. L. 103–416, title I, § 104(b), (c), 108 Stat. 4308.)

REFERENCES IN TEXT

Section 702 of the Nationality Act of 1940, as amended, referred to in subsec. (g), which was classified to section 1002 of this title, was repealed by section 403(a)(42) of act June 27, 1952. See section 1440 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–416 redesignated subsec. (e) as (d) and substituted ''subsection (c)'' for ''subsections (c) or (d)'', and struck out former subsec. (d) which related to revocation of naturalization of persons who, within one year of naturalization, have taken permanent residence in country of their nativity or in any other foreign country.

Subsecs. (e) to (i). Pub. L. 103–416, § 104(c)(1), redesignated subsecs. (f) to (i) as (e) to (h), respectively. Former subsec. (e) redesignated (d).

1991—Subsec. (a). Pub. L. 102–232, § 305(k)(1), substituted ''district court'' for ''District Court'' in first sentence.

Subsec. (g). Pub. L. 102–232, § 305(k)(2), substituted ''clerk of court'' for ''clerk of the court'' in second sentence.

1990—Subsec. (a). Pub. L. 101–649, § 407(d)(18)(A), substituted ''in any District Court of the United States'' for ''in any court specified in subsection (a) of section 1421 of this title''.

Subsec. (g). Pub. L. 101–649, § 407(d)(18)(B), (C), amended second sentence generally and struck out third sentence. Prior to amendment, second and third sentences read as follows: ''In case such certificate was not originally issued by the court making such order, it shall direct the clerk of court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Attorney General of the entry of such order and of such cancellation.''

Subsec. (i). Pub. L. 101–649, § 407(d)(18)(D), substituted ''the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person'' for ''any naturalization court, by or in which a person has been naturalized, to correct, reopen, alter, modify, or vacate its judgment or decree naturalizing such person, during the term of such court or within the time prescribed by the rules of procedure or statutes governing the jurisdiction of the court to take such action''.

1988—Subsec. (c). Pub. L. 100–525, § 9(dd)(1), substituted ''December 24, 1952'' for ''the effective date of this chapter''.

Subsecs. (e) to (j). Pub. L. 100–525, § 9(dd)(2), (3), redesignated former subsecs. (f) to (j) as (e) to (i), respectively, and struck out former subsec. (e) which read as follows: ''The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 of the Nationality Act of 1940 shall not, where such action takes place after the effective date of this chapter, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or been available to a wife or minor child of the naturalized person had such naturalization not been revoked: *Provided*, That this subsection shall not apply in any case in which the revocation and setting aside of the order was the result of actual fraud.''

1986—Subsec. (d). Pub. L. 99–653 substituted ''one year'' for ''five years''.

1961—Subsec. (a). Pub. L. 87–301, § 18(a), inserted ''were illegally procured or'' after ''that such order and certificate of naturalization''.

Subsec. (b). Pub. L. 87–301, § 18(b), inserted ''illegally procured or'' before ''procured by concealment''.

1954—Subsec. (a). Act Sept. 3, 1954, substituted ''United States attorneys'' for ''United States district attorneys''.

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 1986 AMENDMENT

Section 23(f) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: ''The amendment made by section 17 [amending this section] shall not apply to individuals who have taken up permanent residence outside the United States before November 14, 1986.''

CROSS REFERENCES

Contempts, see section 401 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Attorney General, see section 1101(a)(5) of this title.

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101(c)(1) of this title.

Commissioner, see section 1101(a)(8) of this title.

Consular officer, see section 1101(a)(9) of this title.

Naturalization, see section 1101(a)(23) of this title.

Organization, see section 1101(a)(28) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
Parent, as used in this subchapter, see section 1101(c)(2) of this title.
Permanent, see section 1101(a)(31) of this title.
Residence, see section 1101(a)(33) of this title.
Spouse, wife, or husband, see section 1101(a)(35) of this title.
United States, see section 1101(a)(38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1440 of this title.

§ 1452. Certificates of citizenship or U.S. non-citizen national status; procedure

(a) Application to Attorney General for certificate of citizenship; proof; oath of allegiance

A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (c), (d), (e), or (g) of section 1401 of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139), or under the provisions of section 1403 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States.

(b) Application to Secretary of State for certificate of non-citizen national status; proof; oath of allegiance

A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon—

(1) proof to the satisfaction of the Secretary of State that the applicant is a national, but not a citizen, of the United States, and

(2) in the case of such a person born outside of the United States or its outlying possessions, taking and subscribing, before an immigration officer within the United States or its outlying possessions, to the oath of allegiance required by this chapter of a petitioner for naturalization,

the individual shall be furnished by the Secretary of State with a certificate of non-citizen national status, but only if the individual is at the time within the United States or its outlying possessions.

(June 27, 1952, ch. 477, title III, ch. 2, § 341, 66 Stat. 263; Dec. 29, 1981, Pub. L. 97–116, § 18(p), 95 Stat. 1621; Aug. 27, 1986, Pub. L. 99–396, § 16(a), 100 Stat. 843; Nov. 14, 1986, Pub. L. 99–653, § 22, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, § 8(q), 102 Stat. 2618; Dec. 12, 1991, Pub. L. 102–232, title III, § 305(m)(8), 105 Stat. 1750; Oct. 25, 1994, Pub. L. 103–416, title I, § 102(b), 108 Stat. 4307.)

REFERENCES IN TEXT

Section 1993 of the Revised Statutes, referred to in subsec. (a), which was classified to section 6 of this title, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172.

The Nationality Act of 1940, referred to in subsec. (a), is act Oct. 14, 1940, ch. 876, 54 Stat. 1137, as amended. Sections 201, 203, and 205 of the Nationality Act of 1940, which were classified to sections 601, 603, and 605, respectively, of this title, were repealed by section 403(a)(42) of act June 27, 1952.

Act May 7, 1934 (48 Stat. 667), referred to in subsec. (a), which was classified to sections 3b and 3c of this title, was omitted from the Code.

Act Aug. 4, 1937, referred to in subsec. (a), which was classified to sections 5d and 5e of this title, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–416 struck out subsec. (c) which related to application to Attorney General for certificate of citizenship for adopted child.

1991—Subsec. (a). Pub. L. 102–232 substituted ''an applicant'' for ''a petitioner''.

1988—Subsec. (c). Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Pub. L. 99–396, § 16(a)(1), inserted reference to certificates of non-citizen national status in section catchline.

Subsecs. (a), (b). Pub. L. 99–396, § 16(a)(2), (3), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (c). Pub. L. 99–653, as amended by Pub. L. 100–525, added subsec. (c).

1981—Pub. L. 97–116 substituted ''(c), (d), (e), or (g) of section 1401'' for ''(3), (4), (5), or (7) of section 1401(a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective on the first day of the first month beginning more than 120 days after Oct. 25, 1994, see section 102(d) of Pub. L. 103–416, set out as a note under section 1433 of this act.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(m) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 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.

CERTIFICATES OF NON-CITIZEN NATIONAL STATUS; $35 LIMIT ON FEES FOR PROCESSING APPLICATIONS FILED BEFORE END OF FISCAL YEAR 1987

Section 16(c) of Pub. L. 99–396 provided that: ''The Secretary of State may not impose a fee exceeding $35

for the processing of an application for a certificate of non-citizen national status under section 341(b) of the Immigration and Nationality Act [8 U.S.C. 1452(b)] filed before the end of fiscal year 1987.''

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Husband, see section 1101(a)(35) of this title.
Naturalization, see section 1101(a)(23) of this title.
Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
Parent, as used in this subchapter, see section 1101(c)(2) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

§ 1453. Cancellation of certificates issued by Attorney General, the Commissioner or a Deputy Commissioner; action not to affect citizenship status

The Attorney General is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record heretofore issued or made by the Commissioner or a Deputy Commissioner or hereafter made by the Attorney General if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

(June 27, 1952, ch. 477, title III, ch. 2, § 342, 66 Stat. 263.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of Attorney General, Commissioner, and Deputy Commissioner, see section 1101 of this title.

§ 1454. Documents and copies issued by Attorney General

(a) If any certificate of naturalization or citizenship issued to any citizen or any declaration of intention furnished to any declarant is lost, mutilated, or destroyed, the citizen or declarant may make application to the Attorney General for a new certificate or declaration. If the Attorney General finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Attorney General before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who shall have, or may come into possession of it is required to surrender it to the Attorney General.

(b) The Attorney General shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

(c) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

(d) The Attorney General is authorized to make and issue certifications of any part of the naturalization records of any court, or of any certificate of naturalization or citizenship, for use in complying with any statute, State or Federal, or in any judicial proceeding. No such certification shall be made by any clerk of court except upon order of the court.

(June 27, 1952, ch. 477, title III, ch. 2, § 343, 66 Stat. 263; Oct. 24, 1988, Pub. L. 100–525, § 9(ee), 102 Stat. 2621.)

AMENDMENTS

1988—Pub. L. 100–525 redesignated subsecs. (b) to (e) as (a) to (d), respectively, and struck out former subsec. (a) which read as follows: ''A person who claims to have been naturalized in the United States under section 323 of the Nationality Act of 1940 may make application to the Attorney General for a certificate of naturalization. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen and that he has been naturalized as claimed in the application, such individual shall be furnished a certificate of naturalization by the Attorney General, but only if the applicant is at the time within the United States.''

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Foreign state, see section 1101(a)(14) of this title.
Naturalization, see section 1101(a)(23) of this title.
Unmarried, see section 1101(a)(39) of this title.

§ 1455. Fiscal provisions

(a) The Attorney General shall charge, collect, and account for fees prescribed by the Attorney General pursuant to section 9701 of title 31 for the following:

(1) Making, filing, and docketing an application for naturalization, including the hearing on such application, if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by the Attorney General.

(2) Receiving and filing a declaration of intention, and issuing a duplicate thereof.

(b) Notwithstanding the provisions of this chapter or any other law, no fee shall be charged

or collected for an application for declaration of intention or a certificate of naturalization in lieu of a declaration or a certificate alleged to have been lost, mutilated, or destroyed, submitted by a person who was a member of the military or naval forces of the United States at any time after April 20, 1898, and before July 5, 1902; or at any time after April 5, 1917, and before November 12, 1918; or who served on the Mexican border as a member of the Regular Army or National Guard between June 1916 and April 1917; or who has served or hereafter serves in the military, air, or naval forces of the United States after September 16, 1940, and who was not at any time during such period or thereafter separated from such forces under other than honorable conditions, who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform, or who was not at any time during such period or thereafter discharged from such military, air, or naval forces on account of alienage.

(c) All fees collected by the Attorney General shall be deposited by the Attorney General in the Treasury of the United States except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 1356(m) of this title: *Provided, however*, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subchapter, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

(d) During the time when the United States is at war the Attorney General may not charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing an application for naturalization or issuing a certificate of naturalization upon admission to citizenship.

(e) In addition to the other fees required by this subchapter, the applicant for naturalization shall, upon the filing of an application for naturalization, deposit with and pay to the Attorney General a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such applicant may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the Attorney General, the customary and usual witness fees from the moneys which the applicant shall have paid to the Attorney General for such purpose, and the residue, if any, shall be returned by the Attorney General to the applicant.

(f)(1) The Attorney General shall pay over to courts administering oaths of allegiance to persons under this subchapter a specified percentage of all fees described in subsection (a)(1) of this section collected by the Attorney General with respect to persons administered the oath of allegiance by the respective courts. The Attorney General, annually and in consultation with the courts, shall determine the specified percentage based on the proportion, of the total costs incurred by the Service and courts for essential services directly related to the naturalization process, which are incurred by courts.

(2) The Attorney General shall provide on an annual basis to the Committees on the Judiciary of the House of Representatives and of the Senate a detailed report on the use of the fees described in paragraph (1) and shall consult with such Committees before increasing such fees.

(June 27, 1952, ch. 477, title III, ch. 2, §344, 66 Stat. 264; July 7, 1958, Pub. L. 85–508, §26, 72 Stat. 351; Oct. 21, 1968, Pub. L. 90–609, §3, 82 Stat. 1200; Dec. 29, 1981, Pub. L. 97–116, §16, 95 Stat. 1619; Oct. 1, 1988, Pub. L. 100–459, title II, §209(b), 102 Stat. 2203; Oct. 24, 1988, Pub. L. 100–525, §9(ff), 102 Stat. 2621; Nov. 29, 1990, Pub. L. 101–649, title IV, §407(c)(20), (d)(19), 104 Stat. 5041, 5046; Dec. 12, 1991, Pub. L. 102–232, title I, §102(b)(3), title III, §§305(*l*), 309(a)(1)(A)(ii), (b)(14), 105 Stat. 1736, 1750, 1758, 1759.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–232, §305(*l*), made technical correction to Pub. L. 101–649, §407(d)(19)(A)(i). See 1990 Amendment note below.

Subsec. (c). Pub. L. 102–232, §309(b)(14), which provided for a clarifying amendment to subsec. (c), could not be executed, because the phrase which was to be amended did not appear after the amendment by Pub. L. 102–232, §309(a)(1)(A)(ii), see below.

Pub. L. 102–232, §309(a)(1)(A)(ii), amended Pub. L. 100–459. See 1988 Amendment note for subsec. (g) below.

Subsec. (f). Pub. L. 102–232, §102(b)(3), added subsec. (f).

1990—Subsec. (a). Pub. L. 101–649, §407(d)(19)(A)(i), as amended by Pub. L. 102–232, §305(*l*), substituted ''The Attorney General'' for ''The clerk of court''.

Subsec. (a)(1). Pub. L. 101–649, §407(c)(20), (d)(19)(A)(ii), (iii), substituted ''an application'' for ''a petition'' and ''application'' for ''petition'', struck out ''final'' before ''hearing'', and substituted ''the Attorney General'' for ''the naturalization court''.

Subsec. (c). Pub. L. 101–649, §407(d)(19)(B), (C), (F), redesignated subsec. (g) as (c), struck out '', and all fees paid over to the Attorney General by clerks of courts under the provisions of this subchapter,'' before ''shall be deposited by'' and ''or by the clerks of the courts'' before ''from applicants residing in'', and struck out former subsec. (c) which read as follows: ''The clerk of any naturalization court specified in subsection (a) of section 1421 of this title (except the courts specified in subsection (d) of this section) shall account for and pay over to the Attorney General one-half of all fees up to the sum of $40,000, and all fees in excess of $40,000, collected by any such clerk in naturalization proceedings in any fiscal year.''

Subsec. (d). Pub. L. 101–649, §407(c)(20), (d)(19)(B), (D), (F), redesignated subsec. (h) as (d), substituted ''the Attorney General may not'' for ''no clerk of a United States court shall'' and ''an application'' for ''a petition'', struck out before period at end '', and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Attorney General as in the case of other reports required of clerks of courts by this subchapter'' and struck out former subsec. (d) which read as follows: ''The clerk of any United States district court (except in the District Court of the Virgin Islands of the United States and in the District Court of Guam) shall account for and pay over to the Attorney General all fees collected by any such clerk in naturalization proceedings: *Provided, however*, That the clerk of the District Court of the Virgin Islands of the United States and of the District Court of Guam shall report but shall not be required to pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings.''

Subsec. (e). Pub. L. 101–649, §407(c)(20), (d)(19)(B), (E), (F), redesignated subsec. (i) as (e), substituted ''an ap-

plication'' for ''a petition'' and ''applicant'' for ''petitioner'' wherever appearing, substituted references to Attorney General for references to clerk of court wherever appearing, and struck out former subsec. (e) which read as follows: ''The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such respective clerks in their quarterly accounts which they are required to render to the Attorney General within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Attorney General.''

Subsec. (f). Pub. L. 101–649, § 407(d)(19)(B), struck out subsec. (f) which read as follows: ''The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this subchapter upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.''

Subsecs. (g) to (i). Pub. L. 101–649, § 407(d)(19)(F), redesignated subsecs. (g) to (i) as (c) to (e), respectively.

1988—Subsec. (a). Pub. L. 100–525 substituted ''section 9701 of title 31'' for ''title V of the Independent Offices Appropriation Act, 1952 (65 Stat. 290)'' in introductory provisions.

Subsec. (g). Pub. L. 100–459, as amended by Pub. L. 102–232, § 309(a)(1)(A)(ii), inserted ''except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 1356(m) of this title'' after ''Treasury of the United States''.

1981—Subsec. (c). Pub. L. 97–116 substituted ''$40,000'' for ''$6,000'' in two places.

1968—Subsec. (a). Pub. L. 90–609 inserted reference to section 483a of title 31 and substituted provisions making reference to setting of fees by Attorney General for provisions establishing fees of $10 and $5 respectively for covered services.

Subsec. (b). Pub. L. 90–609 struck out provisions setting fixed dollar amounts for specified services to be charged, collected, and accounted for by Attorney General.

Subsec. (g). Pub. L. 90–609 substituted fees received under this subchapter for fees received under subsec. (b) of this section as description of fees received from applicants residing in the Virgin Islands of the United States and in Guam which are turned over to the treasury of the Virgin Islands and Guam respectively.

1958—Subsec. (d). Pub. L. 85–508 struck out ''in Alaska and'' before ''in the District Court of the Virgin Islands''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 102(b)(3) of Pub. L. 102–232 effective 30 days after Dec. 12, 1991, see section 102(c) of Pub. L. 102–232, set out as a note under section 1421 of this title.

Amendment by section 305(*l*) 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.

Amendment by section 309(a)(1)(A)(ii) of Pub. L. 102–232 effective as if included in the enactment of the Department of Justice Appropriations Act, 1989, Pub. L. 100–459, title II, see section 309(a)(3) of Pub. L. 102–232, as amended, set out as a note under section 1356 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 applicable to fiscal years beginning on or after Oct. 1, 1981, see section 21(b)(2) of Pub. L. 97–116, set out as a note under section 1101 of this title.

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85–508 was dependent on admission of Alaska into the Union under section 8(b) of Pub. L. 85–508. Admission was accomplished Jan. 3, 1959 on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes preceding former section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Audit of vouchers and accounts of the courts and their clerical and administrative personnel by Director of Administrative Office of the United States Courts, see section 604 of Title 28, Judiciary and Judicial Procedure.

Clerk of each district court to pay into the Treasury all fees, costs and other moneys collected by him except certain naturalization fees, see section 751 of Title 28.

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.
Service, see section 1101(a)(34) of this title.
United States, see section 1101(a)(38) of this title.

§ 1456. Repealed. Pub. L. 86–682, § 12(c), Sept. 2, 1960, 74 Stat. 708, eff. Sept. 1, 1960

Section, act June 27, 1952, ch. 477, title III, ch. 2, § 345, 66 Stat. 266, related to free transmittal of official mail in naturalization matters. See section 3202 of Title 39, Postal Service.

§ 1457. Publication and distribution of citizenship textbooks; use of naturalization fees

Authorization is granted for the publication and distribution of the citizenship textbook described in subsection (b) of section 1443 of this title and for the reimbursement of the appropriation of the Department of Justice upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Service for the cost of such publication and distribution, such reimbursement to be made upon statements by the Attorney General of books so published and distributed.

(June 27, 1952, ch. 477, title III, ch. 2, § 346, 66 Stat. 266.)

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.
Service, see section 1101(a)(34) of this title.

§ 1458. Compilation of naturalization statistics and payment for equipment

The Attorney General is authorized and directed to prepare from the records in the custody of the Service a report upon those heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign-born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation for the enforcement of this chapter by the Service.

(June 27, 1952, ch. 477, title III, ch. 2, § 347, 66 Stat. 266.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Attorney General, see section 1101(a)(5) of this title.
Naturalization, see section 1101(a)(23) of this title.
Service, see section 1101(a)(34) of this title.

§ 1459. Repealed. Pub. L. 101–649, title IV, § 407(d)(20), Nov. 29, 1990, 104 Stat. 5046

Section, acts June 27, 1952, ch. 477, title III, ch. 2, § 348, 66 Stat. 267; Oct. 24, 1988, Pub. L. 100–525, § 9(gg), 102 Stat. 2622, related to admissibility in evidence of statements voluntarily made to officers and employees in course of their official duties and penalties for failure of clerk of court to perform duties.

PART III—LOSS OF NATIONALITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1101 of this title.

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions

(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or

(3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, or willfully performing any act in violation of section 2385 of title 18, or violating section 2384 of title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

(June 27, 1952, ch. 477, title III, ch. 3, § 349, 66 Stat. 267; Sept. 3, 1954, ch. 1256, § 2, 68 Stat. 1146; Sept. 26, 1961, Pub. L. 87–301, § 19, 75 Stat. 656; Sept. 14, 1976, Pub. L. 94–412, title V, § 501(a), 90 Stat. 1258; Oct. 10, 1978, Pub. L. 95–432, §§ 2, 4, 92 Stat. 1046; Dec. 29, 1981, Pub. L. 97–116, § 18(k)(2), (q), 95 Stat. 1620, 1621; Nov. 14, 1986, Pub. L. 99–653, §§ 18, 19, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, §§ 8(m), (n), 9(hh), 102 Stat. 2618, 2622.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the 180th day immediately following June 27, 1952. See section 407 of act June 27, 1952, set out as an Effective Date note under section 1101 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–525, § 9(hh), substituted ''A person'' for ''From and after the effective date of this chapter a person''.

Subsecs. (a) to (c). Pub. L. 100–525, § 8(m), (n), amended Pub. L. 99–653. See 1986 Amendment notes below.

1986—Subsec. (a). Pub. L. 99–653, § 18(a), as amended by Pub. L. 100–525, § 8(m)(1), inserted ''voluntarily performing any of the following acts with the intention of relinquishing United States nationality'' after ''his nationality by''.

Subsec. (a)(1). Pub. L. 99–653, § 18(b), substituted ''or upon an application filed by a duly authorized agent, after having attained the age of eighteen years'' for ''upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided* That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this chapter, apply for a visa and for admission to the United States as a special immigrant under the provisions of section 1101(a)(27)(E) of this title''.

Subsec. (a)(2). Pub. L. 99–653, § 18(c), inserted ", after having attained the age of eighteen years" after "political subdivision thereof".

Subsec. (a)(3). Pub. L. 99–653, § 18(d), as amended by Pub. L. 100–525, § 8(m)(2), substituted "if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or" for "unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided*, That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or".

Subsec. (a)(4). Pub. L. 99–653, § 18(e), (f), as amended by Pub. L. 100–525, § 8(m)(3), inserted "after attaining the age of eighteen years" after "political subdivision thereof," in subpars. (A) and (B).

Subsecs. (b), (c). Pub. L. 99–653, § 19, as amended by Pub. L. 100–525, § 8(n), redesignated former subsec. (c) as (b) and substituted "Any" for "Except as provided in subsection (b) of this section, any", and struck out former subsec. (b) which read as follows: "Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act."

1981—Subsec. (a). Pub. L. 97–116 struck out "(a)" designation as added by section 4 of Pub. L. 95–432, which was not executed since it would have resulted in a subsec. (a) designation of "(a)(a)", and substituted in par. (1) "special immigrant" for "nonquota immigrant".

1978—Subsec. (a)(5). Pub. L. 95–432, §§ 2, 4, redesignated par. (6) as (5). Former par. (5), which dealt with expatriation of persons who voted in a political election in a foreign state or participated in an election or plebiscite to determine sovereignty over foreign territory, was struck out.

Subsec. (a)(6), (7). Pub. L. 95–432, § 4, redesignated pars. (7) and (9) as (6) and (7), respectively. Former pars. (6) and (7) redesignated (5) and (6), respectively.

Subsec. (a)(8). Pub. L. 95–432, § 2, struck out par. (8) which dealt with expatriation of persons who were dismissed or dishonorably discharged as result of deserting the military, air, or naval forces of the United States in time of war.

Subsec. (a)(9). Pub. L. 95–432, § 4, redesignated par. (9) as (7).

1976—Subsec. (a)(10). Pub. L. 94–412 struck out par. (10) which dealt with the expatriation of persons who remained outside of the jurisdiction of the United States in time of war or national emergency to avoid service in the military.

1961—Subsec. (c). Pub. L. 87–301 added subsec. (c).

1954—Subsec. (a)(9). Act Sept. 3, 1954, provided for forfeiture of citizenship of persons advocating the overthrow of the Government by force or violence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 8(m), (n) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 23(g) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: "The amendments made by sections 18, 19, and 20 [amending this section and section 1483 of this title] shall apply to actions taken before, on, or after November 14, 1986."

EFFECTIVE DATE OF 1981 AMENDMENT

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

SHORT TITLE

Section 1 of act Sept. 3, 1954, provided: "That this Act [amending this section] may be cited as the 'Expatriation Act of 1954'."

SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

RIGHT OF EXPATRIATION

R.S. § 1999 provided that: "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

CROSS REFERENCES

Definition of the term—
- Attorney General, see section 1101(a)(5) of this title.
- Consular officer, see section 1101(a)(9) of this title.
- Foreign state, see section 1101(a)(14) of this title.
- National, see section 1101(a)(21) of this title.
- National of the United States, see section 1101(a)(22) of this title.
- Naturalization, see section 1101(a)(23) of this title.
- Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.
- Parent, as used in this subchapter, see section 1101(c)(2) of this title.
- United States, see section 1101(a)(38) of this title.

Treason, sedition and subversive activities, see section 2381 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1483 of this title.

§ 1482. Repealed. Pub. L. 95–432, § 1, Oct. 10, 1978, 92 Stat. 1046

Section, act June 27, 1952, ch. 477, title III, ch. 3, § 350, 66 Stat. 269, provided that an individual with dual nationality who voluntarily claims the benefits of the foreign state nationality loses his United States nationality by having continuous residence in the foreign state for 3 years after having attained 22 years of age unless prior to the 3 year period he takes an oath of allegiance to the United States, or his residence in the foreign state was for a reason specified in section 1485(1), (2), (4), (5), (6), (7), or (8) of this title or section 1486(1) or (2) of this title.

EFFECTIVE DATE OF REPEAL

Section 1 of Pub. L. 95–432 provided that repeal of this section is effective Oct. 10, 1978.

§ 1483. Restrictions on loss of nationality

(a) Except as provided in paragraphs (6) and (7) of section 1481(a) of this title, no national of the

United States can lose United States nationality,[1] under this chapter while within the United States or any of its outlying possessions, but loss of nationality shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this Part if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have lost United States nationality by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (3) and (5) of section 1481(a) of this title.

(June 27, 1952, ch. 477, title III, ch. 3, § 351, 66 Stat. 269; Dec. 29, 1981, Pub. L. 97–116, § 18(r), 95 Stat. 1621; Nov. 14, 1986, Pub. L. 99–653, § 20, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100–525, § 8(*o*), 102 Stat. 2618; Oct. 25, 1994, Pub. L. 103–416, title I, § 105(a), 108 Stat. 4308.)

AMENDMENTS

1994—Pub. L. 103–416 in section catchline substituted ''loss of nationality'' for ''expatriation'', in subsec. (a) substituted ''lose United States nationality'' for ''expatriate himself, or be expatriated'' and ''loss of nationality'' for ''expatriation'', and in subsec. (b) substituted ''lost United States nationality'' for ''expatriated himself''.

1988—Subsec. (b). Pub. L. 100–525 amended Pub. L. 99–653. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–653, as amended by Pub. L. 100–525, substituted ''paragraphs (3)'' for ''paragraphs (2), (4),''.

1981—Subsec. (a). Pub. L. 97–116, § 18(r)(1), substituted ''paragraphs (6) and (7) of section 1481(a)'' for ''paragraphs (7), (8), and (9) of section 1481''.

Subsec. (b). Pub. L. 97–116, § 18(r)(2), substituted ''and (5)'' for ''(5), and (6)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–653 applicable to actions taken before, on, or after Nov. 14, 1986, see section 23(g) of Pub. L. 99–653, set out as a note under section 1481 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.

RIGHT OF EXPATRIATION

Provisions preserving the right and disavowal of foreign allegiance, see note under section 1481 of this title.

CROSS REFERENCES

Definition of the term—
National of the United States, see section 1101(a)(22) of this title.
Outlying possessions of the United States, see section 1101(a)(29) of this title.
United States, see section 1101(a)(38) of this title.

[1] So in original. The comma probably should not appear.

§§ 1484 to 1487. Repealed. Pub. L. 95–432, § 2, Oct. 10, 1978, 92 Stat. 1046

Section 1484, act June 27, 1952, ch. 477, title III, ch. 3, § 352, 66 Stat. 269, related to loss of nationality by naturalized national by continuous residence for 3 years in the territory or foreign state of which the individual was a former national or in which his place of birth was situated or continuous residence for 5 years in any other foreign state or states.

Section 1485, acts June 27, 1952, ch. 477, title III, ch. 3, § 353, 66 Stat. 270; Aug. 4, 1959, Pub. L. 86–129, § 1, 73 Stat. 274, provided exceptions for certain persons from loss of nationality pursuant to section 1484.

Section 1486, acts June 27, 1952, ch. 477, title III, ch. 3, § 354, 66 Stat. 271; Aug. 4, 1959, Pub. L. 86–129, §§ 2, 3, 73 Stat. 274; Sept. 26, 1961, Pub. L. 87–301, § 20, 75 Stat. 656, provided exceptions for certain persons from loss of nationality by continuous residence for five years in any foreign country of which the individual was not a national or in which his place of birth was situated.

Section 1487, act June 27, 1952, ch. 477, title III, ch. 3, § 355, 66 Stat. 272, related to loss of American nationality through expatriation of parents.

§ 1488. Nationality lost solely from performance of acts or fulfillment of conditions

The loss of nationality under this Part shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Part.

(June 27, 1952, ch. 477, title III, ch. 3, § 356, 66 Stat. 272.)

CROSS REFERENCES

Definition of national, see section 1101 of this title.

§ 1489. Application of treaties; exceptions

Nothing in this subchapter shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party and which has been ratified by the Senate before December 25, 1952: *Provided, however*, That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention.

(June 27, 1952, ch. 477, title III, ch. 3, § 357, 66 Stat. 272; Oct. 24, 1988, Pub. L. 100–525, § 9(ii), 102 Stat. 2622.)

AMENDMENTS

1988—Pub. L. 100–525 substituted ''before December 25, 1952'' for ''upon the effective date of this subchapter''.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Ineligible to citizenship, see section 1101(a)(19) of this title.
National of the United States, see section 1101(a)(22) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.

PART IV—MISCELLANEOUS

§ 1501. Certificate of diplomatic or consular officer of United States as to loss of American nationality

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of Part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.

(June 27, 1952, ch. 477, title III, ch. 4, § 358, 66 Stat. 272; Oct. 25, 1994, Pub. L. 103–416, title I, § 106, 108 Stat. 4309.)

REFERENCES IN TEXT

Chapter IV of the Nationality Act of 1940, as amended, referred to in text, which was classified to sections 800 to 810 of this title, was repealed by section 403(a)(42) of act June 27, 1952.

CODIFICATION

Section was formerly classified to section 100 of this title.

AMENDMENTS

1994—Pub. L. 103–416 inserted at end ''Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.''

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101(a)(5) of this title.
Consular officer, see section 1101(a)(9) of this title.
Foreign state, see section 1101(a)(14) of this title.
National of the United States, see section 1101(a)(22) of this title.

§ 1502. Certificate of nationality issued by Secretary of State for person not a naturalized citizen of United States for use in proceedings of a foreign state

The Secretary of State is authorized to issue, in his discretion and in accordance with rules and regulations prescribed by him, a certificate of nationality for any person not a naturalized citizen of the United States who presents satisfactory evidence that he is an American national and that such certificate is needed for use in judicial or administrative proceedings in a foreign state. Such certificate shall be solely for use in the case for which it was issued and shall be transmitted by the Secretary of State through appropriate official channels to the judicial or administrative officers of the foreign state in which it is to be used.

(June 27, 1952, ch. 477, title III, ch. 4, § 359, 66 Stat. 273.)

CODIFICATION

Section was formerly classified to section 101 of this title.

CROSS REFERENCES

Definition of the term—
Foreign state, see section 1101(a)(14) of this title.
National of the United States, see section 1101(a)(22) of this title.
United States, see section 1101(a)(38) of this title.

§ 1503. Denial of rights and privileges as national

(a) Proceedings for declaration of United States nationality

If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any exclusion proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

(b) Application for certificate of identity; appeal

If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer of the United States in the foreign country in which he is residing for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall

be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a person under sixteen years of age who was born abroad of a United States citizen parent.

(c) Application for admission to United States under certificate of identity; revision of determination

A person who has been issued a certificate of identity under the provisions of subsection (b) of this section, and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this chapter relating to the conduct of proceedings involving aliens seeking admission to the United States. A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise. Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this chapter relating to aliens seeking admission to the United States.

(June 27, 1952, ch. 477, title III, ch. 4, § 360, 66 Stat. 273.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101(a)(3) of this title.
Application for admission, see section 1101(a)(4) of this title.
Attorney General, see section 1101(a)(5) of this title.
Consular officer, see section 1101(a)(9) of this title.
National of the United States, see section 1101(a)(22) of this title.
Residence, see section 1101(a)(33) of this title.
United States, see section 1101(a)(38) of this title.
Judicial review of orders of deportation and exclusion, see section 1105a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105a, 1501 of this title.

§ 1504. Cancellation of United States passports and Consular Reports of Birth

(a) The Secretary of State is authorized to cancel any United States passport or Consular Report of Birth, or certified copy thereof, if it appears that such document was illegally, fraudulently, or erroneously obtained from, or was created through illegality or fraud practiced upon, the Secretary. The person for or to whom such document has been issued or made shall be given, at such person's last known address, written notice of the cancellation of such document, together with the procedures for seeking a prompt post-cancellation hearing. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

(b) For purposes of this section, the term ''Consular Report of Birth'' refers to the report, designated as a ''Report of Birth Abroad of a Citizen of the United States'', issued by a consular officer to document a citizen born abroad.

(June 27, 1952, ch. 477, title III, ch. 4, § 361, as added Oct. 25, 1994, Pub. L. 103–416, title I, § 107(a), 108 Stat. 4309.)

SUBCHAPTER IV—REFUGEE ASSISTANCE

§ 1521. Office of Refugee Resettlement; establishment; appointment of Director; functions

(a) There is established, within the Department of Health and Human Services, an office to be known as the Office of Refugee Resettlement (hereinafter in this subchapter referred to as the ''Office''). The head of the Office shall be a Director (hereinafter in this subchapter referred to as the ''Director''), to be appointed by the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the ''Secretary'').

(b) The function of the Office and its Director is to fund and administer (directly or through arrangements with other Federal agencies), in consultation with the Secretary of State, programs of the Federal Government under this subchapter.

(June 27, 1952, ch. 477, title IV, ch. 2, § 411, as added Mar. 17, 1980, Pub. L. 96–212, title III, § 311(a)(2), 94 Stat. 110; Apr. 30, 1994, Pub. L. 103–236, title I, § 162(n)(1), 108 Stat. 409.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–236 substituted ''the Secretary of State'' for ''and under the general policy guidance of the United States Coordinator for Refugee Affairs (hereinafter in this subchapter referred to as the 'Coordinator')''.

EFFECTIVE DATE

Subchapter applicable with respect to fiscal years beginning on or after Oct. 1, 1979, see section 313 of Pub. L. 96–212, set out as a note under section 1522 of this title.

SHORT TITLE OF REFUGEE ACT OF 1980

For short title of Refugee Act of 1980, see Short Title of 1980 Amendment note set out under section 1101 of this title.

REFERENCES TO SECRETARY OF EDUCATION OR SECRETARY OF DEPARTMENT OF HEALTH AND HUMAN SERVICES

Section 204(e) of Pub. L. 96–212 provided that: ''Any reference in this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title] or in chapter 2 of title IV of the Immigration and Nationality Act [this subchapter] to the Secretary of Education or the Secretary of Health and Human Services or to the Department of Health and Human Services shall be deemed, before the effective date of the Department of Education Organization Act [see Effective Date note set out under section 3401 of Title 20, Education], to be a reference to the Secretary of Health, Education, and Welfare or to the Department of Health, Education, and Welfare, respectively.''

CONGRESSIONAL DECLARATION OF POLICIES AND OBJECTIVES

Section 101 of Pub. L. 96–212 provided that:

''(a) the Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.

''(b) The objectives of this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title] are to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.''

§ 1522. Authorization for programs for domestic resettlement of and assistance to refugees

(a) Conditions and considerations

(1)(A) In providing assistance under this section, the Director shall, to the extent of available appropriations (i) make available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible, (ii) provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible, (iii) insure that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency, in accordance with subsection (e)(2) of this section, and (iv) insure that women have the same opportunities as men to participate in training and instruction.

(B) It is the intent of Congress that in providing refugee assistance under this section—

(i) employable refugees should be placed on jobs as soon as possible after their arrival in the United States;

(ii) social service funds should be focused on employment-related services, English-as-a-second-language training (in nonwork hours where possible), and case-management services; and

(iii) local voluntary agency activities should be conducted in close cooperation and advance consultation with State and local governments.

(2)(A) The Director and the Federal agency administering subsection (b)(1) of this section shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities.

(B) The Director shall develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States.

(C) Such policies and strategies, to the extent practicable and except under such unusual circumstances as the Director may recognize, shall—

(i) insure that a refugee is not initially placed or resettled in an area highly impacted (as determined under regulations prescribed by the Director after consultation with such agencies and governments) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area,

(ii) provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly (not less often than quarterly) meet with representatives of State and local governments to plan and coordinate in advance of their arrival the appropriate placement of refugees among the various States and localities, and

(iii) take into account—

(I) the proportion of refugees and comparable entrants in the population in the area,

(II) the availability of employment opportunities, affordable housing, and public and private resources (including educational, health care, and mental health services) for refugees in the area,

(III) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance, and

(IV) the secondary migration of refugees to and from the area that is likely to occur.

(D) With respect to the location of placement of refugees within a State, the Federal agency administering subsection (b)(1) of this section shall, consistent with such policies and strategies and to the maximum extent possible, take into account recommendations of the State.

(3) In the provision of domestic assistance under this section, the Director shall make a periodic assessment, based on refugee population and other relevant factors, of the relative needs of refugees for assistance and services under this subchapter and the resources available to meet such needs. The Director shall compile and maintain data on secondary migration of refugees within the United States and, by State of residence and nationality, on the proportion of refugees receiving cash or medical assistance described in subsection (e) of this section. In allocating resources, the Director shall avoid duplication of services and provide for maximum coordination between agencies providing related services.

(4)(A) No grant or contract may be awarded under this section unless an appropriate proposal and application (including a description of the agency's ability to perform the services specified in the proposal) are submitted to, and approved by, the appropriate administering official. Grants and contracts under this section shall be made to those agencies which the appropriate administering official determines can best perform the services. Payments may be made for activities authorized under this subchapter in advance or by way of reimbursement. In carrying out this section, the Director, the Secretary of State, and any such other appropriate administering official are authorized—

(i) to make loans, and

(ii) to accept and use money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for the purpose of carrying out this section.

(B) No funds may be made available under this subchapter (other than under subsection (b)(1) of this section) to States or political subdivisions in the form of block grants, per capita grants, or similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts—

(i) for medical screening and initial medical treatment under subsection (b)(5) of this section,

(ii) for services for refugees under subsection (c)(1) of this section,

(iii) for targeted assistance project grants under subsection (c)(2) of this section, and

(iv) for assistance for refugee children under subsection (d)(2) of this section.

(C) The Director may not delegate to a State or political subdivision his authority to review or approve grants or contracts under this subchapter or the terms under which such grants or contracts are made.

(5) Assistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion.

(6) As a condition for receiving assistance under this section, a State must—

(A) submit to the Director a plan which provides—

(i) a description of how the State intends to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible,

(ii) a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance,

(iii) for the designation of an individual, employed by the State, who will be responsible for insuring coordination of public and private resources in refugee resettlement,

(iv) for the care and supervision of and legal responsibility for unaccompanied refugee children in the State, and

(v) for the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary;

(B) meet standards, goals, and priorities, developed by the Director, which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services; and

(C) submit to the Director, within a reasonable period of time after the end of each fiscal year, a report on the uses of funds provided under this subchapter which the State is responsible for administering.

(7) The Secretary, together with the Secretary of State with respect to assistance provided by the Secretary of State under subsection (b) of this section, shall develop a system of monitoring the assistance provided under this section. This system shall include—

(A) evaluations of the effectiveness of the programs funded under this section and the performance of States, grantees, and contractors;

(B) financial auditing and other appropriate monitoring to detect any fraud, abuse, or mismanagement in the operation of such programs; and

(C) data collection on the services provided and the results achieved.

(8) The Attorney General shall provide the Director with information supplied by refugees in conjunction with their applications to the Attorney General for adjustment of status, and the Director shall compile, summarize, and evaluate such information.

(9) The Secretary, the Secretary of Education, the Attorney General, and the Secretary of State may issue such regulations as each deems appropriate to carry out this subchapter.

(10) For purposes of this subchapter, the term ''refugee'' includes any alien described in section 1157(c)(2) of this title.

(b) Program of initial resettlement

(1)(A) For—

(i) fiscal years 1980 and 1981, the Secretary of State is authorized, and

(ii) fiscal year 1982 and succeeding fiscal years, the Director (except as provided in subparagraph (B)) is authorized,

to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including initial reception and placement with sponsors) of refugees in the United States. Grants to, or contracts with, private nonprofit voluntary agencies under this paragraph shall be made consistent with the objectives of this subchapter, taking into account the different resettlement approaches and practices of such agencies. Resettlement assistance under this paragraph shall be provided in coordination with the Director's provision of other assistance under this subchapter. Funds provided to agencies under such grants and contracts may only be obligated or expended during the fiscal year in which they are provided (or the subsequent fiscal year or such subsequent fiscal period as the Federal contracting agency may approve) to carry out the purposes of this subsection.

(B) If the President determines that the Director should not administer the program under this paragraph, the authority of the Director under the first sentence of subparagraph (A) shall be exercised by such officer as the President shall from time to time specify.

(2) The Director is authorized to develop programs for such orientation, instruction in English, and job training for refugees, and such other education and training of refugees, as facilitates their resettlement in the United States. The Director is authorized to implement such programs, in accordance with the provisions of this section, with respect to refugees in the United States. The Secretary of State is authorized to implement such programs with respect to refugees awaiting entry into the United States.

(3) The Secretary is authorized,[1] to make arrangements (including cooperative arrangements with other Federal agencies) for the temporary care of refugees in the United States in emergency circumstances, including the establishment of processing centers, if necessary, without regard to such provisions of law (other than the Renegotiation Act of 1951 [50 App. U.S.C. 1211 et seq.] and section 1524(b) of this title) regulating the making, performance, amendment, or modification of contracts and the expenditure of funds of the United States Government as the Secretary may specify.

(4) The Secretary,[1] shall—

(A) assure that an adequate number of trained staff are available at the location at which the refugees enter the United States to assure that all necessary medical records are available and in proper order;

(B) provide for the identification of refugees who have been determined to have medical conditions affecting the public health and requiring treatment;

(C) assure that State or local health officials at the resettlement destination within the United States of each refugee are promptly notified of the refugee's arrival and provided with all applicable medical records; and

(D) provide for such monitoring of refugees identified under subparagraph (B) as will insure that they receive appropriate and timely treatment.

The Secretary shall develop and implement methods for monitoring and assessing the quality of medical screening and related health services provided to refugees awaiting resettlement in the United States.

(5) The Director is authorized to make grants to, and enter into contracts with, State and local health agencies for payments to meet their costs of providing medical screening and initial medical treatment to refugees.

(6) The Comptroller General shall directly conduct an annual financial audit of funds expended under each grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987.

(7) Each grant or contract with an agency under paragraph (1) shall require the agency to do the following:

(A) To provide quarterly performance and financial status reports to the Federal agency administering paragraph (1).

(B)(i) To provide, directly or through its local affiliate, notice to the appropriate county or other local welfare office at the time that the agency becomes aware that a refugee is offered employment and to provide notice to the refugee that such notice has been provided, and

(ii) upon request of such a welfare office to which a refugee has applied for cash assistance, to furnish that office with documentation respecting any cash or other resources provided directly by the agency to the refugee under this subsection.

(C) To assure that refugees, known to the agency as having been identified pursuant to paragraph (4)(B) as having medical conditions affecting the public health and requiring treatment, report to the appropriate county or other health agency upon their resettlement in an area.

(D) To fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled and to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan.

(E) To transmit to the Federal agency administering paragraph (1) an annual report describing the following:

(i) The number of refugees placed (by county of placement) and the expenditures made in the year under the grant or contract, including the proportion of such expenditures used for administrative purposes and for provision of services.

(ii) The proportion of refugees placed by the agency in the previous year who are receiving cash or medical assistance described in subsection (e) of this section.

(iii) The efforts made by the agency to monitor placement of the refugees and the activities of local affiliates of the agency.

(iv) The extent to which the agency has coordinated its activities with local social service providers in a manner which avoids duplication of activities and has provided notices to local welfare offices and the reporting of medical conditions of certain aliens to local health departments in accordance with subparagraphs (B)(i) and (C).

(v) Such other information as the agency administering paragraph (1) deems to be appropriate in monitoring the effectiveness of agencies in carrying out their functions under such grants and contracts.

The agency administering paragraph (1) shall promptly forward a copy of each annual report transmitted under subparagraph (E) to the Committees on the Judiciary of the House of Representatives and of the Senate.

(8) The Federal agency administering paragraph (1) shall establish criteria for the performance of agencies under grants and contracts under that paragraph, and shall include criteria relating to an agency's—

(A) efforts to reduce welfare dependency among refugees resettled by that agency,

(B) collection of travel loans made to refugees resettled by that agency for travel to the United States,

(C) arranging for effective local sponsorship and other nonpublic assistance for refugees resettled by that agency,

(D) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices,

(E) compliance with the guidelines established by the Director for the placement and resettlement of refugees within the United States, and

(F) compliance with other requirements contained in the grant or contract, including the reporting and other requirements under subsection (b)(7) of this section.

[1] So in original. The comma probably should not appear.

The Federal administering agency shall use the criteria in the process of awarding or renewing grants and contracts under paragraph (1).

(c) Project grants and contracts for services for refugees

(1)(A) The Director is authorized to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—

(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services;

(ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and

(iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.

(B) The funds available for a fiscal year for grants and contracts under subparagraph (A) shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.

(C) Any limitation which the Director establishes on the proportion of funds allocated to a State under this paragraph that the State may use for services other than those described in subsection (a)(1)(B)(ii) of this section shall not apply if the Director receives a plan (established by or in consultation with local governments) and determines that the plan provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 1516 of title 29.

(2)(A) The Director is authorized to make grants to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

(B) Grants shall be made available under this paragraph—

(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency,

(ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.

(d) Assistance for refugee children

(1) The Secretary of Education is authorized to make grants, and enter into contracts, for payments for projects to provide special educational services (including English language training) to refugee children in elementary and secondary schools where a demonstrated need has been shown.

(2)(A) The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care, furnished to any refugee child (except as provided in subparagraph (B)) during the thirty-six month period beginning with the first month in which such refugee child is in the United States.

(B)(i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] prescribes for the availability of such services to any other child in that State).

(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such a child is in the United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care.

(iii) In carrying out the Director's responsibilities under clause (ii), the Director is authorized to enter into contracts with appropriate public or private nonprofit agencies under such conditions as the Director determines to be appropriate.

(iv) The Director shall prepare and maintain a list of (I) all such unaccompanied children who have entered the United States after April 1, 1975, (II) the names and last known residences of their parents (if living) at the time of arrival, and (III) the children's location, status, and progress.

(e) Cash assistance and medical assistance to refugees

(1) The Director is authorized to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee during the thirty-six month period beginning with the first month in which such refugee has entered the United States and for the identifiable and reasonable administrative costs of providing this assistance.

(2)(A) Cash assistance provided under this subsection to an employable refugee is conditioned, except for good cause shown—

(i) on the refugee's registration with an appropriate agency providing employment services described in subsection (c)(1)(A)(i) of this section, or, if there is no such agency available, with an appropriate State or local employment service;

(ii) on the refugee's participation in any available and appropriate social service or targeted assistance program (funded under subsection (c) of this section) providing job or language training in the area in which the refugee resides; and

(iii) on the refugee's acceptance of appropriate offers of employment.

(B) Cash assistance shall not be made available to refugees who are full-time students in institutions of higher education (as defined by the Director after consultation with the Secretary of Education).

(C) In the case of a refugee who—

(i) refuses an offer of employment which has been determined to be appropriate either by the agency responsible for the initial resettlement of the refugee under subsection (b) of this section or by the appropriate State or local employment service,

(ii) refuses to go to a job interview which has been arranged through such agency or service, or

(iii) refuses to participate in a social service or targeted assistance program referred to in subparagraph (A)(ii) which such agency or service determines to be available and appropriate,

cash assistance to the refugee shall be terminated (after opportunity for an administrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).

(3) The Director shall develop plans to provide English training and other appropriate services and training to refugees receiving cash assistance.

(4) If a refugee is eligible for aid or assistance under a State plan approved under part A of title IV or under title XIX of the Social Security Act [42 U.S.C. 601 et seq., 1396 et seq.], or for supplemental security income benefits (including State supplementary payments) under the program established under title XVI of that Act [42 U.S.C. 1381 et seq.], funds authorized under this subsection shall only be used for the non-Federal share of such aid or assistance, or for such supplementary payments, with respect to cash and medical assistance provided with respect to such refugee under this paragraph.

(5) The Director is authorized to allow for the provision of medical assistance under paragraph (1) to any refugee, during the one-year period after entry, who does not qualify for assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] on account of any resources or income requirement of such plan, but only if the Director determines that—

(A) this will (i) encourage economic self-sufficiency, or (ii) avoid a significant burden on State and local governments; and

(B) the refugee meets such alternative financial resources and income requirements as the Director shall establish.

(6) As a condition for receiving assistance, reimbursement, or a contract under this subsection and notwithstanding any other provision of law, a State or agency must provide assurances that whenever a refugee applies for cash or medical assistance for which assistance or reimbursement is provided under this subsection, the State or agency must notify promptly the agency (or local affiliate) which provided for the initial resettlement of the refugee under subsection (b) of this section of the fact that the refugee has so applied.

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. The Secretary may permit alternative projects to cover specific groups of refugees who have been in the United States 36 months or longer if the Secretary determines that refugees in the group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act [42 U.S.C. 1396 et seq., 601 et seq.].

(C) The Secretary shall report to Congress not later than October 31, 1985, on the results of these projects and on any recommendations respecting changes in the refugee assistance program under this section to take into account such results.

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under section 1524(a) of this title, part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or title XIX of such Act [42 U.S.C. 1396 et seq.], may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

(8) In its provision of assistance to refugees, a State or political subdivision shall consider the recommendations of, and assistance provided by, agencies with grants or contracts under subsection (b)(1) of this section.

(f) Assistance to States and counties for incarceration of certain Cuban nationals; priority for removal and return to Cuba

(1) The Attorney General shall pay compensation to States and to counties for costs incurred by the States and counties to confine in prisons, during the fiscal year for which such payment is made, nationals of Cuba who—

(A) were paroled into the United States in 1980 by the Attorney General,

(B) after such parole committed any violation of State or county law for which a term of imprisonment was imposed, and

(C) at the time of such parole and such violation were not aliens lawfully admitted to the United States—

(i) for permanent residence, or

(ii) under the terms of an immigrant or a nonimmigrant visa issued,

under this chapter.

(2) For a State or county to be eligible to receive compensation under this subsection, the chief executive officer of the State or county shall submit to the Attorney General, in accordance with rules to be issued by the Attorney General, an application containing—

(A) the number and names of the Cuban nationals with respect to whom the State or county is entitled to such compensation, and

(B) such other information as the Attorney General may require.

(3) For a fiscal year the Attorney General shall pay the costs described in paragraph (1) to each State and county determined by the Attorney General to be eligible under paragraph (2); except that if the amounts appropriated for the fiscal year to carry out this subsection are insufficient to cover all such payments, each of such payments shall be ratably reduced so that the total of such payments equals the amounts so appropriated.

(4) The authority of the Attorney General to pay compensation under this subsection shall be effective for any fiscal year only to the extent and in such amounts as may be provided in advance in appropriation Acts.

(5) It shall be the policy of the United States Government that the President, in consultation with the Attorney General and all other appropriate Federal officials and all appropriate State and county officials referred to in paragraph (2), shall place top priority on seeking the expeditious removal from this country and the return to Cuba of Cuban nationals described in paragraph (1) by any reasonable and responsible means, and to this end the Attorney General may use the funds authorized to carry out this subsection to conduct such policy.

(June 27, 1952, ch. 477, title IV, ch. 2, §412, as added Mar. 17, 1980, Pub. L. 96–212, title III, §311(a)(2), 94 Stat. 111; amended Oct. 25, 1982, Pub. L. 97–363, §§3(a), 4–6, 96 Stat. 1734–1736; Nov. 22, 1983, Pub. L. 98–164, title X, §1011(b), 97 Stat. 1061; Oct. 12, 1984, Pub. L. 98–473, title I, §101(d), 98 Stat. 1876, 1877; Nov. 6, 1986, Pub. L. 99–605, §§3–5(c), 6(a), (b), (d), 8, 9(a), (b), 10, 12, 13, 100 Stat. 3449–3451, 3453–3455; Oct. 24, 1988, Pub. L. 100–525, §6(b), 102 Stat. 2616; Apr. 30, 1994, Pub. L. 103–236, title I, §162(n)(2), 108 Stat. 409; Oct. 25, 1994, Pub. L. 103–416, title II, §219(x), 108 Stat. 4318.)

REFERENCES IN TEXT

The Renegotiation Act of 1951, referred to in subsec. (b)(3), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended, which was classified principally to section 1211 et seq. of Title 50, Appendix, War and National Defense, prior to its omission from the Code. See note preceding section 1211 of Title 50, Appendix.

The Social Security Act, referred to in subsecs. (d)(2)(B)(i), (e)(4), (5), (7)(B), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title IV of the Social Security Act are classified generally to part A (§601 et seq.) and part B (§620 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–236, §162(n)(2)(A), struck out ", together with the Coordinator," after "subsection (b)(1) of this section".

Subsec. (b)(3), (4). Pub. L. 103–236, §162(n)(2)(B), struck out "in consultation with the Coordinator," after "Secretary is authorized," in par. (3) and after "The Secretary," in par. (4).

Subsec. (e)(7)(C). Pub. L. 103–236, §162(n)(2)(C), struck out ", in consultation with the United States Coordinator for Refugee Affairs," after "The Secretary".

Subsec. (e)(7)(D). Pub. L. 103–416 struck out "paragraph (1) or (2) of" after "appropriated under".

1988—Subsecs. (f)(5), (g). Pub. L. 100–525 redesignated subsec. (g) as (f)(5) and substituted "all other appropriate Federal officials and all appropriate State and county officials referred to in paragraph (2)" for "all appropriate Federal, State, and county officials referred to in section 13 of this Act", "Cuban nationals described in paragraph (1)" for "such persons defined in subsection (f)(1) of this section" and "authorized to carry out this subsection" for "hereafter authorized by this section".

1986—Subsec. (a)(2)(A). Pub. L. 99–605, §4(1), inserted "and the Federal agency administering subsection (b)(1) of this section" after "The Director", "(not less often than quarterly)" after "shall consult regularly", and "before their placement in those States and localities" after "States and localities".

Subsec. (a)(2)(C)(iii). Pub. L. 99–605, §4(2), added cl. (iii).

Subsec. (a)(2)(D). Pub. L. 99–605, §4(3), added subpar. (D).

Subsec. (a)(4). Pub. L. 99–605, §12, designated existing provision as subpar. (A), redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Subsec. (a)(9). Pub. L. 99–605, §3(b), inserted ", the Secretary of Education, the Attorney General," after "The Secretary".

Subsec. (b)(1)(A). Pub. L. 99–605, §5(b)(2), struck out provisions which related to requirement in grants and contracts that agency provide notice to appropriate welfare office that refugee is offered employment, provide notice to the refugee about notice to the welfare office, and assure that refugees with medical conditions affecting public health and requiring treatment report to appropriate health agency in area of resettlement.

Subsec. (b)(6). Pub. L. 99–605, §5(a), amended par. (6) generally, substituting "shall directly conduct an annual financial audit" for "shall conduct an annual audit", and "grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987" for "grants and contracts made under this subsection".

Subsec. (b)(7). Pub. L. 99–605, §5(b)(1), added par. (7).

Subsec. (b)(8). Pub. L. 99–605, §5(c), added par. (8).

Subsec. (c)(1). Pub. L. 99–605, §6(a), designated existing provision as par. (1)(A), redesignated former pars. (1) to (3) as cls. (i) to (iii), respectively, and added subpar. (B).

Subsec. (c)(1)(C). Pub. L. 99–605, §6(b), added subpar. (C).

Subsec. (c)(2). Pub. L. 99–605, §8(a), added par. (2).

Subsec. (d)(1). Pub. L. 99–605, §3(a), substituted "Secretary of Education" for "Director".

Subsec. (e)(2)(A). Pub. L. 99–605, §9(a)(1), struck out provisions following cl. (iii) which related to termination of cash assistance to refugee with month in which refugee refuses offer of employment or participation in social service program.

Subsec. (e)(2)(A)(i). Pub. L. 99–605, §6(d), substituted "(c)(1)(A)(i)" for "(c)(1)".

Subsec. (e)(2)(A)(ii). Pub. L. 99–605, §8(b), inserted "or targeted assistance" after "social service".

Subsec. (e)(2)(C). Pub. L. 99–605, §9(a)(2), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 99–605, §10, inserted provisions which related to alternative projects for specific groups of refugees in the United States 36 months or

longer if determined to be disproportionately dependent on welfare.

Subsec. (e)(8). Pub. L. 99–605, § 9(b), added par. (8).

Subsecs. (f), (g). Pub. L. 99–605, § 13, added subsecs. (f) and (g).

1984—Subsec. (e)(7). Pub. L. 98–473 added par. (7).

1983—Subsec. (b)(1)(B). Pub. L. 98–164 struck out first sentence directing the President to provide for a study of which agency is best able to administer the program of initial resettlement and to report to the Congress, not later than Mar. 1, 1981, on that study, and ''after such study'' after ''If the President determines''.

1982—Subsec. (a)(1)(A). Pub. L. 97–363, § 3(a)(1), (2), designated existing provisions of par. (1) as subpar. (A) and redesignated existing cls. (A) through (D) as (i) through (iv), respectively.

Subsec. (a)(1)(B). Pub. L. 97–363, § 3(a)(3), added subpar. (B).

Subsec. (a)(2)(A). Pub. L. 97–363, § 4(a)(1), designated existing provisions of par. (2) as subpar. (A).

Subsec. (a)(2)(B), (C). Pub. L. 97–363, § 4(a)(2), added subpars. (B) and (C).

Subsec. (a)(3). Pub. L. 97–363, § 4(b), inserted provision that the Director shall compile and maintain data on secondary migration of refugees within the Untied States and, by State of residence and nationality, on the proportion of refugees receiving cash or medical assistance described in subsec. (e) of this section.

Subsec. (b)(1)(A). Pub. L. 97–363, § 5(1), struck out provision that the Secretary of State and the Director shall jointly monitor the assistance provided during fiscal years 1980 and 1981 under this paragraph.

Pub. L. 97–363, § 5(2), inserted provision relating to period for expenditure of funds provided under grants and contracts and the inclusion in such grants and contracts of requirements for notification by the agency in the event of employment offers to the refugee and assurance that refugees identified under par. (4)(B) will report to appropriate health agencies upon resettlement.

Subsec. (b)(5). Pub. L. 97–363, § 5(3), added par. (5).

Subsec. (b)(6). Pub. L. 97–363, § 5(4), added par. (6).

Subsec. (e)(1). Pub. L. 97–363, § 6(a), struck out ''up to'' before ''100 per centum''.

Subsec. (e)(2). Pub. L. 97–363, § 6(b), redesignated existing provisions of par. (2) as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (iii), respectively, added cl. (ii), inserted provision that cash assistance be cut off, after opportunity for hearing, to a refugee who refuses appropriate offer of employment or participation in available social service program, and added subpar. (B).

Subsec. (e)(6). Pub. L. 97–363, § 6(c), added par. (6).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6(c) of Pub. L. 100–525 provided that: ''The amendments made by this section [amending this section and section 1524 of this title] shall be effective as if they were included in the enactment of the Refugee Assistance Extension Act of 1986 [Pub. L. 99–605].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5(d) of Pub. L. 99–605 provided that:

''(1) Section 412(b)(7) (other than subparagraphs (B)(i), (C), and (D)) of the Immigration and Nationality Act [8 U.S.C. 1522(b)(7)], as added by subsection (b)(1) of this section, shall apply to grants and contracts made or renewed after the end of the 30-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

''(2) Section 412(b)(7)(D) of the Immigration and Nationality Act [8 U.S.C. 1522(b)(7)], as added by subsection (b)(1) of this section, shall apply to grants and contracts made or renewed after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 6, 1986].

''(3) The criteria required under the amendment made by subsection (c) [amending this section] shall be established not later than 60 days after the date of the enactment of this Act [Nov. 6, 1986].''

Section 6(c) of Pub. L. 99–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to allocations of funds for fiscal years beginning with fiscal year 1987.''

Section 9(c) of Pub. L. 99–605 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply to aliens entering the United States as refugees on or after the first day of the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Nov. 6, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(d) of Pub. L. 98–473 provided in part that: ''The amendment made by this paragraph [amending this section] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 8 of Pub. L. 97–363 provided that: ''The amendments made by—

''(1) sections 3(b), 4, 5(3), 5(4), 6(a), and 7 [amending this section and section 1523 of this title] take effect on October 1, 1982, and

''(2) sections 5(2), 6(b), and 6(c) [amending this section] apply to grants and contracts made, and assistance furnished, on or after October 1, 1982.''

EFFECTIVE DATE

Section 313 of part B of title III of Pub. L. 96–212 provided that:

''(a) Except as otherwise provided in this section, the amendments made by this part [enacting sections 1521 to 1524 of this title, amending section 2601 of Title 22, Foreign Relations and Intercourse, and repealing provisions set out as a note under section 2601 of Title 22] shall apply to fiscal years beginning on or after October 1, 1979.

''(b) Subject to subsection (c), the limitations contained in sections 412(d)(2)(A) and 412(e)(1) of the Immigration and Nationality Act [subsecs. (d)(2)(A) and (e)(1) of this section] on the duration of the period for which child welfare services and cash and medical assistance may be provided to particular refugees shall not apply to such services and assistance provided before April 1, 1981.

''(c) Notwithstanding section 412(e)(1) of the Immigration and Nationality Act [subsec. (e)(1) of this section] and in lieu of any assistance which may otherwise be provided under such section with respect to Cuban refugees who entered the United States and were receiving assistance under section 2(b) of the Migration and Refugee Assistance Act of 1962 [22 U.S.C. 2601(b)] before October 1, 1978, the Director of the Office of Refugee Resettlement is authorized—

''(1) to provide reimbursement—

''(A) in fiscal year 1980, for 75 percent,

''(B) in fiscal year 1981, for 60 percent,

''(C) in fiscal year 1982, for 45 percent, and

''(D) in fiscal year 1983, for 25 percent,

of the non-Federal costs or providing cash and medical assistance (other than assistance described in paragraph (2)) to such refugees, and

''(2) to provide reimbursement in any fiscal year for 100 percent of the non-Federal costs associated with such Cuban refugees with respect to whom supplemental security income payments were being paid as of September 30, 1978, under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

''(d) the requirements of section 412(a)(6)(A) of the Immigration and Nationality Act [subsec. (a)(6)(A) of this section] shall apply to assistance furnished under chapter 2 of title IV of such Act [this subchapter] after October 1, 1980, or such earlier date as the Director of the Office of Refugee Resettlement may establish.''

MAINTAINING FUNDING LEVEL OF MATCHING GRANT PROGRAM

Section 7 of Pub. L. 99–605 provided that:

''(a) MAINTAINING FUNDING LEVEL.—Subject to the availability of appropriations, the Director of the Office of Refugee Resettlement shall not reduce the maximum average Federal contribution level per refugee in the matching grant program and shall not increase the percentage grantee matching requirement under that program below the level, or above the percentage, in effect under the program for grants in fiscal year 1985.

''(b) MATCHING GRANT PROGRAM.—The 'matching grant program' referred to in subsection (a) is the voluntary agency program which is known as the matching grant program and is funded under section 412(c) of the Immigration and Nationality Act [8 U.S.C. 1522(c)].''

REIMBURSEMENT TO STATE AND LOCAL PUBLIC AGENCIES FOR EXPENSES INCURRED FOR PROVIDING SOCIAL SERVICES TO APPLICANTS FOR ASYLUM

Section 401 of Pub. L. 96–212 provided that:

''(a) The Director of the Office of Refugee Resettlement is authorized to use funds appropriated under paragraphs (1) and (2) of section 414(a) of the Immigration and Nationality Act [8 U.S.C. 1524(a)] to reimburse State and local public agencies for expenses which those agencies incurred, at any time, in providing aliens described in subsection (c) of this section with social services of the types for which reimbursements were made with respect to refugees under paragraphs (3) through (6) of section 2(b) of the Migration and Refugee Assistance Act of 1962 (as in effect prior to the enactment of this Act) [22 U.S.C. 2601(b)(3) to (6)] or under any other Federal law.

''(b) The Attorney General is authorized to grant to an alien described in subsection (c) of this section permission to engage in employment in the United States and to provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

''(c) This section applies with respect to any alien in the United States (1) who has applied before November 1, 1979, for asylum in the United States, (2) who has not been granted asylum, and (3) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.''

ELIGIBILITY OF CERTAIN CUBAN-HAITIAN ENTRANTS ENTERING AFTER NOV. 1, 1979

Pub. L. 97–35, title V, §§ 543(a)(2), 547, Aug. 13, 1981, 95 Stat. 459, 463, eff. Oct. 1, 1981, provided that: ''For purposes of the Refugee Education Assistance Act of 1980 [set out as a note below], an alien who entered the United States on or after November 1, 1979, and is in the United States with the immigration status of a Cuban-Haitian entrant (status pending) shall be considered to be an eligible participant (within the meaning of section 101(3) of such Act) but only during the 36-month period beginning with the first month in which the alien entered the United States as such an entrant or otherwise first acquired such status.''

CUBAN REFUGEES; INCARCERATION AND DEPORTATION OF CERTAIN CUBANS

Pub. L. 96–533, title VII, § 716, Dec. 16, 1980, 94 Stat. 3162, provided that: ''The Congress finds that the United States Government has already incarcerated recently arrived Cubans who are admitted criminals, are security threats, or have incited civil disturbances in Federal processing facilities. The Congress urges the Executive branch, consistent with United States law, to seek the deportation of such individuals.''

REFUGEE EDUCATION ASSISTANCE ACT OF 1980

Pub. L. 96–422, Oct. 10, 1980, 94 Stat. 1799, as amended by Pub. L. 96–424, Oct. 10, 1980, 94 Stat. 1820; Pub. L. 97–35, title V, §§ 543(a)(1), (b)–(d), 544–547, Aug. 13, 1981, 95 Stat. 459–463, eff. Oct. 1, 1981; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–382, title III, § 391(a), Oct. 20, 1994, 108 Stat. 4021, provided: ''That this Act may be cited as the 'Refugee Education Assistance Act of 1980'.

''TITLE I—GENERAL PROVISIONS

''DEFINITIONS

''SEC. 101. As used in this Act—

''(1) The terms 'elementary school', 'local educational agency', 'secondary school', 'State', and 'State educational agency' have the meanings given such terms under section 14101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 8801].

''(2) The term 'elementary or secondary nonpublic schools' means schools which comply with the compulsory education laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)].

''(3) The term 'eligible participant' means any alien who—

''(A) has been admitted into the United States as a refugee under section 207 of the Immigration and Nationality Act [section 1157 of this title];

''(B) has been paroled into the United States as a refugee by the Attorney General pursuant to section 212(d)(5) of such Act [section 1182(d)(5) of this title];

''(C) is an applicant for asylum, or has been granted asylum, in the United States; or

''(D) has fled from the alien's country of origin and has, pursuant to an Executive order of the President, been permitted to enter the United States and remain in the United States indefinitely for humanitarian reasons;

but only during the 36-month [period] beginning with the first month in which the alien entered the United States (in the case of an alien described in (A), (B), or (D)) or the month in which the alien applied for asylum (in the case of an alien described in subparagraph (C)).

''(4) The term 'Secretary' means the Secretary of Education.

''AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

''SEC. 102. (a) There are authorized to be appropriated for each of the fiscal years 1981, 1982, and 1983, but only in a lump sum for all programs under this Act, subject to allocation in accordance with subsection (b), such sums as may be necessary to make payments to which State educational agencies are entitled under this Act and payments for administration under section 104.

''(b)(1) If the sums appropriated for any fiscal year to make payments to States under this Act are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under titles II through IV for such year, the allocations to State educational agencies under each of such titles shall be ratably reduced by the same percentage to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

''(2) In the event that funds become available for making payments under this Act for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

''TREATMENT OF CERTAIN JURISDICTIONS

''SEC. 103. (a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

''(b)(1) Each jurisdiction to which this section applies shall be entitled to grants for the purposes set forth in sections 201(a), 302, and 402 in amounts equal to amounts determined by the Secretary in accordance with criteria established by the Secretary, except that the aggregate of the amount to which such jurisdictions are so entitled for any period—

''(A) for the purposes set forth in section 201(a), shall not exceed an amount equal to 1 percent of the amount authorized to be appropriated under section 201 for that period;

''(B) for the purposes set forth in section 302, shall not exceed an amount equal to 1 percent of the aggregate of the amounts to which all States are entitled under section 301 for that period; and

''(C) for the purposes set forth in section 402, shall not exceed an amount equal to 1 percent of the aggregate of the amounts to which all States are entitled under section 401 for that period.

''(2) If the aggregate of the amounts determined by the Secretary pursuant to paragraph (1) to be so needed for any period exceeds an amount equal to such 1 percent limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such limitation.

''STATE ADMINISTRATIVE COSTS

''SEC. 104. The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this Act, except that the total of such payments or any period shall not exceed 2 percent of the amount which that State educational agency receives for that period under this Act.

''WITHHOLDING

''SEC. 105. Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any title of this Act, the Secretary shall notify that agency that further payments will not be made to the agency under such title, or in the discretion of the Secretary, that the State educational agency shall not make further payments under such title to specified local education agencies or other entities (in the case of funds under title IV) whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under such title, or payments by the State educational agency under such title shall be limited to local educational agencies or other entities (in the case of funds under title IV) whose actions did not cause or were not involved in the failure, as the case may be.

''CONSULTATION WITH OTHER AGENCIES

''SEC. 106. To the extent that may be appropriate to facilitate the determination of the amount of any reductions under sections 201(b)(2), 301(b)(3), and 401(b)(2), the Secretary shall consult with the heads of other agencies providing assistance to eligible participants in order to secure information concerning the disbursement of funds for educational purposes under programs administered by them and provide, wherever feasible, for coordination among those programs and the programs under titles II through IV of this Act.

''TITLE II—GENERAL ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES

''STATE ENTITLEMENTS

''SEC. 201. (a) The Secretary shall, in accordance with the provisions of this title, make grants to State educational agencies for fiscal year 1981, and for each subsequent fiscal year, for the purposes of assisting local educational agencies of that State in providing basic education for eligible participants enrolled in elementary or secondary public schools. Payments made under this title to any State shall be used in accordance with applications approved under section 202 for public educational services for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of that State.

''(b)(1) As soon as possible after the date of the enactment of the Consolidated Refugee Education Assistance Act [Aug. 13, 1981], the Secretary shall establish a formula (reflecting the availability of the full amount authorized for this title under section 203(b)) by which to determine the amount of the grant which each State educational agency is entitled to receive under this title for any fiscal year. The formula established by the Secretary shall take into account the number of years that an eligible participant assisted under this title has resided within the United States and the relative costs, by grade level, of providing education for elementary and secondary school children. On the basis of the formula the Secretary shall allocate among the State educational agencies, for each fiscal year, the amounts available to carry out this title, subject to such reductions or adjustments as may be required under paragraph (2) or subsection (c). Funds shall be allocated among State educational agencies pursuant to the formula without regard to variations in educational costs among different geographical areas.

''(2) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available for such fiscal year under any other Federal law for expenditure within the State for the same purposes as those for which funds are made available under this title, except that the reduction shall be made only to the extent that (A) such amounts are made available for such purposes specifically because of the refugee, parolee, or asylee status of the individuals to be served by such funds, and (B) such amounts are made available to provide assistance to individuals eligible for services under this title. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

''(3) For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 201(a) shall be considered to be payments under this title.

''(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

''APPLICATIONS

''SEC. 202. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

''(1) provide that the payments under this title will be used for the purposes set forth in section 201(a);

''(2) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with the formula established by the Secretary under section 201, subject to any reductions in payments for those local educational agencies identified under paragraph (3) to which funds described by section 201(b)(2) are made available for the same purposes under other Federal laws;

''(3) specify the amount of funds described by section 201(b)(2) which are made available under other Federal laws for expenditure within the State for the same purposes as those for which funds are made

available under this title and the local educational agencies to which such funds are made available;

''(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting the application for such funds reasonable notice and opportunity for a hearing; and

''(5) provide for making such reports as the Secretary may reasonably require to carry out this title.

''(b) The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

''PAYMENTS AND AUTHORIZATIONS

''SEC. 203. (a) The Secretary shall pay to each State educational agency having an application approved under section 202 the amount which that State is entitled to receive under this title.

''(b) For fiscal year 1981 and for each subsequent fiscal year, there is authorized to be appropriated, in the manner specified under section 102, to make payments under this title an amount equal to the product of—

''(1) the total number of eligible participants enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies within all the States (other than the jurisdictions to which section 103 is applicable) during the fiscal year for which the determination is made,

multiplied by—

''(2) $400.

''TITLE III—SPECIAL IMPACT ASSISTANCE FOR SUBSTANTIAL INCREASES IN ATTENDANCE

''STATE ENTITLEMENTS

''SEC. 301. (a) The Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for fiscal year 1981, and for each subsequent fiscal year for the purpose set forth in section 302.

''(b)(1) Except as provided in paragraph (3) of this subsection and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this title for any fiscal year shall be equal to the sum of—

''(A) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants less than one year, multiplied by (ii) $700;

''(B) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants at least one year but not more than two years, multiplied by (ii) $500; and

''(C) the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants more than two years but not more than three years, multiplied by (ii) $300.

''(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of eligible participants who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this title, and are receiving supplementary educational services during such period, is equal to—

''(A) at least 500; or

''(B) at least 5 percent of the total number of students enrolled in such public or nonpublic schools during such fiscal year;

whichever number is less. Notwithstanding the provisions of this paragraph, the local educational agencies referred to in paragraph (1) shall include local educational agencies eligible to receive assistance by reason of the last sentence of section 3(b) and section 3(c)(2)(B) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) [20 U.S.C. 238(b) and (c)(2)(B)], relating to Federal impact aid, subject to paragraph (5) of this subsection.

''(3) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available under any other Federal law to agencies or other entities for educational, or education-related, services or activities within the State because of the significant concentration of eligible participants. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

''(4) For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 302 shall be considered to be payments under this title.

''(5) The amount of the grant to which a State educational agency is entitled as a result of the last sentence of paragraph (2) shall be limited to eligible participants who meet the requirements of section 101(4).

''(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(3) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

''(d) Whenever the Secretary determines that any amount of a payment made to a State under this title for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to one or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this title, be regarded as part of such State's payment (as determined under subsection (b)) for such year, but shall remain available until the end of the succeeding fiscal year.

''USES OF FUNDS

''SEC. 302. (a) Payments made under this title to any State may be used in accordance with applications approved under section 303 for supplementary educational services and costs, as described under subsection (b) of this section, for eligible participants enrolled in the

elementary and secondary public schools under the jurisdiction of the local educational agencies of the State described in section 301(b)(2) and in elementary and secondary nonpublic schools of that State within the districts served by such agencies.

''(b) Financial assistance provided under this title shall be available to meet the costs of providing eligible participants supplementary educational services, including but not limited to—

''(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

''(A) English language instruction;

''(B) other bilingual educational services; and

''(C) special materials and supplies;

''(2) additional basic instructional services which are directly attributable to the presence in the school district of eligible participants, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basis instructional services; and

''(3) special inservice training for personnel who will be providing instruction described in either paragraph (1) or (2) of this subsection.

''APPLICATIONS

''SEC. 303. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

''(1) provide that the educational programs, services and activities for which payments under this title are made will be administered by or under the supervision of the agency;

''(2) provide assurances that payments under this title will be used for purposes set forth in section 302;

''(3) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with section 301, subject to any reductions in payments for local educational agencies identified under paragraph (5) to take into account the funds described by section 301(b)(3) that are made available for educational, or education-related, services or activities for eligible participants enrolled in elementary or secondary public schools under the jurisdiction of such agencies or elementary or secondary nonpublic schools within the districts served by such agencies;

''(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

''(5) specify (A) the amount of funds described by section 301(b)(3) that are made available under other Federal laws to agencies or other entities for educational, or education-related, services or activities within the State because of a significant concentration of eligible participants, and (B) the local educational agencies within whose districts are eligible participants provided services from such funds who are enrolled in elementary or secondary schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools served by such agencies;

''(6) provide for making such reports as the Secretary may reasonably require to perform his functions under this Act; and

''(7) provide assurances—

''(A) that to the extent consistent with the number of eligible participants enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

''(B) that the control of funds provided under this paragraph and the title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

''(C) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

''(b) The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

''PAYMENTS

''SEC. 304. (a) The Secretary shall pay to each State educational agency having an application approved under section 303 the amount which that State is entitled to receive under this title.

''(b) If a State is prohibited by law from providing public educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 303(a)(6), or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in such schools, the Secretary may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this Act.

''TITLE IV—ADULT EDUCATION PROGRAMS

''STATE ENTITLEMENTS

''SEC. 401. (a) The Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for fiscal year 1982, and for each subsequent fiscal year for the purposes of providing for the operation of adult education programs as described under section 402 for eligible participants aged 16 or older. Payments made under this title to any State shall be used in accordance with applications approved under section 403.

''(b)(1) Except as provided in subsection (c) of this section, the amount of the grant to which a State educational agency is entitled under this Act, for any fiscal year described in subsection (a), shall be equal to the product of—

''(A) the number of eligible participants aged 16 or older who are enrolled, during the period for which the determination is made, in programs of instruction referred to in section 402 which are offered within that State, other than any such refugees who are enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies;

multiplied by—

''(B) $300.

''(2) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year, as determined under paragraph (1), shall be reduced by the amounts made available for such fiscal year under any other Federal law for expenditure within the State for the same purposes as those for which funds are made available under this title, except that the reduction shall be made only to the extent that (A)

such amounts are made available for such purposes specifically because of the refugee, parolee, or asylee status of the individuals to be served by such funds, and (B) such amounts are made available to provide assistance to individuals eligible for services under this title. The amount of the reduction required under this paragraph shall be determined by the Secretary in a manner consistent with subsection (c).

''(3) For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The entitlements of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 402 shall be considered to be payments under this title.

''(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

''USE OF FUNDS

''SEC. 402. (a) Funds made available to State educational agencies under this title shall be used by such agencies to provide for programs of adult education and adult basic education to eligible participants aged 16 or older in need for such services who are not enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies. Such programs may be provided directly by the State educational agency, or such agency may make grants, or enter into contracts, with local educational agencies, and other public or private nonprofit agencies, organizations, or institutions to provide for such programs. Funds available under this title may be used for—

''(1) programs of instruction of such adult refugees in basic reading and mathematics, in development and enhancement of necessary skills, and for the promotion of literacy among such refugees;

''(2) administrative costs of planning and operating such programs of instruction;

''(3) educational support services which meet the need for such adult refugees, including guidance and counseling with regard to educational, career, and employment opportunities; and

''(4) special projects designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for individuals, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.] or under the Vocational Education Act of 1963 [now Carl D. Perkins Vocational and Applied Technology Education Act] [20 U.S.C. 2301 et seq.].

''(b) The State educational agency shall review applications for grants and contracts in a manner consistent with the purposes of paragraphs (12) and (13) of section 306(b) of the Adult Education Act [20 U.S.C. 1205(b)(12) and (13)].

''(c) The State educational agency shall provide for the use of funds made available under this title in such manner that the maximum number of eligible participants aged 16 or older residing within the State receive education under the programs of instruction described under subsection (a).

''APPLICATIONS

''SEC. 403. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

''(1) provide that payments made under this title will be used only for the purposes, and in the manner, set forth in section 402;

''(2) specify the amount of reduction required under section 401(b)(2);

''(3) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the entity submitting an application for such funds reasonable notice and opportunity for a hearing; and

''(4) provide for making periodic reports to the Secretary evaluating the effectiveness of the payments made under this title, and such other reports as the Secretary may reasonably require to perform his functions under this Act.

''(b) The Secretary shall approve an application which meets the requirements of subsection (a). The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

''TITLE V—OTHER PROVISIONS RELATING TO CUBAN AND HAITIAN ENTRANTS

''AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

''SEC. 501. (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act [8 U.S.C. 1521 et seq.]. The authorizations provided in section 414 of that Act [8 U.S.C. 1524] shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

''(2) Any reference in chapter III of title I of the Supplemental Appropriations and Rescission Act, 1980 [Pub. L. 96–304, July 8, 1980, 94 Stat. 857, 865], to section 405(c)(2) of the International Security and Development Assistance Act of 1980 or to the International Security Act of 1980 shall be construed to be a reference to paragraph (1) of this subsection.

''(b) In addition, the President may, by regulation, provide that benefits granted under any law of the United States (other than the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]) with respect to individuals admitted to the United States under section 207(c) of the Immigration and Nationality Act [8 U.S.C. 1157(c)] shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

''(c)(1)(A) Any Federal agency may, under the direction of the President, provide assistance (in the form of materials, supplies, equipment, work, services, facilities, or otherwise) for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. Such assistance shall be provided on such terms and conditions as the President may determine.

''(B) Funds available to carry out this subsection shall be used to reimburse State and local governments for expenses which they incur for the purposes described in subparagraph (A). Such funds may be used to reimburse Federal agencies for assistance which they provide under subparagraph (A).

''(2) The President may direct the head of any Federal agency to detail personnel of that agency, on either a reimbursable or nonreimbursable basis, for temporary duty with any Federal agency directed to provide supervision and management for purposes of this subsection.

''(3) The furnishing of assistance or other exercise of functions under this subsection shall not be considered a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

''(4) Funds to carry out this subsection may be available until expended.

''(5) [Repealed. Pub. L. 96–424, Oct. 10, 1980, 94 Stat. 1820.]

''(d) The authorities provided in this section are applicable to assistance and services provided with respect to Cuban or Haitian entrants at any time after their arrival in the United States, including periods prior to the enactment of this section.

''(e) As used in this section, the term 'Cuban and Haitian entrant' means—

''(1) any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

''(2) any other national of Cuba or Haiti—

''(A) who—

''(i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.];

''(ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

''(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

''(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.''

[Pub. L. 96–424, Oct. 10, 1980, 94 Stat. 1820, provided in part that the repeal of section 501(c)(5) of Pub. L. 96–422, set out above, is effective Oct. 11, 1980.]

[Pub. L. 97–35, title V, subtitle C, § 547, Aug. 13, 1981, 95 Stat. 463, provided that: ''This subtitle [repealing sections 239a and 1211b of Title 20, Education, amending the Refugee Assistance Act of 1980, set out above, and repealing provisions set out as a note under section 1211b of Title 20] shall take effect on October 1, 1981.'']

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

CONSOLIDATED REFUGEE EDUCATION ASSISTANCE ACT

Pub. L. 97–35, title V, subtitle C, § 541, Aug. 13, 1981, 95 Stat. 458, provided that: ''This subtitle [repealing sections 239a and 1211b of Title 20, Education, amending the Refugee Education Assistance Act of 1980, set out above, and repealing provisions set out as a note under section 1211b of Title 20] may be cited as the 'Consolidated Refugee Education Assistance Act'.''

EXECUTIVE ORDER NO. 12246

Ex. Ord. No. 12246, Oct. 10, 1980, 45 F.R. 68367, which delegated to the Secretary of State the functions of the President under section 501(c) of Pub. L. 96–422, set out above, was revoked by Ex. Ord. No. 12251, Nov. 15, 1980, 45 F.R. 76085, formerly set out below.

EXECUTIVE ORDER NO. 12251

Ex. Ord. No. 12251, Nov. 15, 1980, 45 F.R. 76085, which related to the delegation of functions concerning educational assistance to Cuban and Haitian entrants, was revoked by Ex. Ord. No. 12341, Jan. 21, 1982, 47 F.R. 3341, set out below.

EX. ORD. NO. 12341. DELEGATION OF FUNCTIONS CONCERNING EDUCATIONAL ASSISTANCE TO CUBAN AND HAITIAN ENTRANTS

Ex. Ord. No. 12341, Jan. 21, 1982, 47 F.R. 3341, provided:

By the authority vested in me as President of the United States of America by Section 501 of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) and Section 301 of Title 3 of the United States Code, and to reassign some responsibilities for providing assistance to Cuban and Haitian entrants, it is hereby ordered as follows:

SECTION 1. The functions vested in the President by Sections 501(a) and (b) of the Refugee Education Assistance Act of 1980, hereinafter referred to as the Act (8 U.S.C. 1522 note), are delegated to the Secretary of Health and Human Services.

SEC. 2. The Attorney General shall ensure that actions are taken to provide such assistance to Cuban and Haitian entrants as provided for by Section 501(c) of the Act. To that end, the functions vested in the President by Section 501(c) of the Act are delegated to the Attorney General.

SEC. 3. All actions taken pursuant to Executive Order No. 12251 [formerly set out as a note above] shall continue in effect until superseded by actions under this Order.

SEC. 4. Executive Order No. 12251 of November 15, 1980, is revoked.

RONALD REAGAN.

PRESIDENTIAL DETERMINATION AUTHORIZING TRANSPORTATION FOR CERTAIN UNACCOMPANIED MINORS, ELDERLY, AND ILL INDIVIDUALS

Determination of President of the United States, No. 95–10, Dec. 15, 1994, 59 F.R. 65891, provided:

Memorandum for the Secretary of Defense [and] the Attorney General

It is hereby determined that the Secretary of Defense shall assist the Attorney General under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96–422) [set out above] by providing transportation for certain unaccompanied minors, elderly, and ill individuals. The Secretary of Defense may agree to expand the range of services and category of individuals as he determines.

The Secretary of Defense is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

CROSS REFERENCES

Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals, see section 1365 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1523 of this title; title 42 sections 1382, 1396v.

§ 1523. Congressional reports

(a) The Secretary shall submit a report on activities under this subchapter to the Committees on the Judiciary of the House of Representatives and of the Senate not later than the January 31 following the end of each fiscal year, beginning with fiscal year 1980.

(b) Each such report shall contain—

(1) an updated profile of the employment and labor force statistics for refugees who have entered the United States within the five-fiscal-year period immediately preceding the fiscal year within which the report is to be made and for refugees who entered earlier and who have shown themselves to be significantly and disproportionately dependent on welfare, as well as a description of the extent to which refugees received the forms of assistance or services under this subchapter during that period;

(2) a description of the geographic location of refugees;

(3) a summary of the results of the monitoring and evaluation conducted under section 1522(a)(7) of this title during the period for which the report is submitted;

(4) a description of (A) the activities, expenditures, and policies of the Office under this subchapter and of the activities of States, voluntary agencies, and sponsors, and (B) the

Director's plans for improvement of refugee resettlement;

(5) evaluations of the extent to which (A) the services provided under this subchapter are assisting refugees in achieving economic self-sufficiency, achieving ability in English, and achieving employment commensurate with their skills and abilities, and (B) any fraud, abuse, or mismanagement has been reported in the provisions of services or assistance;

(6) a description of any assistance provided by the Director pursuant to section 1522(e)(5) of this title;

(7) a summary of the location and status of unaccompanied refugee children admitted to the United States; and

(8) a summary of the information compiled and evaluation made under section 1522(a)(8) of this title.

(June 27, 1952, ch. 477, title IV, ch. 2, § 413, as added Mar. 17, 1980, Pub. L. 96–212, title III, § 311(a)(2), 94 Stat. 115; amended Oct. 25, 1982, Pub. L. 97–363, §§ 3(b), 7, 96 Stat. 1734, 1737; Nov. 6, 1986, Pub. L. 99–605, § 11, 100 Stat. 3455; Oct. 24, 1988, Pub. L. 100–525, § 9(jj), 102 Stat. 2622; Apr. 30, 1994, Pub. L. 103–236, title I, § 162(n)(3), 108 Stat. 409.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–236 struck out '', in consultation with the Coordinator,'' after ''The Secretary''.

1988—Pub. L. 100–525 redesignated former subsec. (a)(1) as (a) and former subsec. (a)(2) as (b), and within (b), further redesignated former subpars. (A) to (H) as pars. (1) to (8), respectively, and former cls. (i) and (ii) of pars. (4) and (5) as cls. (A) and (B), respectively; and struck out former subsec. (b) which provided for a report to Congress by the Secretary not later than one year after Mar. 17, 1980, and former subsecs. (c) and (d) which provided for certain reports to Congress by the Director not later than certain dates in 1983.

1986—Subsec. (a)(2)(A). Pub. L. 99–605 substituted ''the United States within the five-fiscal-year period immediately preceding the fiscal year within which the report is to be made and for refugees who entered earlier and who have shown themselves to be significantly and disproportionately dependent on welfare'' for ''under this chapter since May 1975''.

1982—Subsec. (c). Pub. L. 97–363, § 3(b), added subsec. (c).

Subsec. (d). Pub. L. 97–363, § 7, added subsec. (d).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–363 effective Oct. 1, 1982, see section 8 of Pub. L. 97–363, set out as a note under section 1522 of this title.

§ 1524. Authorization of appropriations

(a) There are authorized to be appropriated for fiscal year 1995, fiscal year 1996, and fiscal year 1997 such sums as may be necessary to carry out this subchapter.

(b) The authority to enter into contracts under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(June 27, 1952, ch. 477, title IV, ch. 2, § 414, as added Mar. 17, 1980, Pub. L. 96–212, title III, § 311(a)(2), 94 Stat. 116; amended Oct. 25, 1982, Pub. L. 97–363, § 2, 96 Stat. 1734; Nov. 6, 1986, Pub. L. 99–605, § 2, 100 Stat. 3449; Oct. 24, 1988, Pub. L. 100–525, § 6(a), 102 Stat. 2616; Oct. 1, 1991, Pub. L. 102–110, § 5, 105 Stat. 558; June 8, 1993, Pub. L. 103–37, § 1, 107 Stat. 107; Oct. 25, 1994, Pub. L. 103–416, title II, § 208, 108 Stat. 4312.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–416 substituted ''fiscal year 1995, fiscal year 1996, and fiscal year 1997'' for ''fiscal year 1993 and fiscal year 1994''.

1993—Subsec. (a). Pub. L. 103–37 substituted ''fiscal year 1993 and fiscal year 1994'' for ''fiscal year 1992''.

1991—Subsec. (a). Pub. L. 102–110 amended subsec. (a) generally, substituting present provisions for provisions which authorized appropriations for fiscal years 1987 and 1988 to carry out this subchapter generally and specifically to carry out section 1522(c)(1), (b)(5), and (f) of this title.

1988—Subsec. (a)(1). Pub. L. 100–525 substituted ''through (4)'' for ''through (5)''.

1986—Subsec. (a)(1). Pub. L. 99–605, § 2(a), (b)(1), substituted ''for each of fiscal years 1987 and 1988'' for ''for fiscal year 1983'', and ''(2) through (5)'' for ''(2) and (3)''.

Subsec. (a)(2). Pub. L. 99–605, § 2(b)(2), amended par. (2) generally, substituting ''1987 $74,783,000 and for fiscal year 1988 $77,924,000'' for ''1983 $100,000,000'', and ''1522(c)(1)'' for ''1522(c)''.

Subsec. (a)(3). Pub. L. 99–605, § 2(b)(2), amended par. (3) generally, substituting ''1987 $8,761,000 and for fiscal year 1988 $9,125,000'' for ''1983 $14,000,000''.

Subsec. (a)(4). Pub. L. 99–605, § 2(b)(3), added par. (4).

1982—Subsec. (a). Pub. L. 97–363, § 2, substituted provisions with regard to fiscal 1983 authorizing appropriation of sums necessary to carry out provisions of this chapter, authorizing appropriations of $100,000,000 for services to refugees under section 1522(c) of this title, and authorizing appropriations of $14,000,000 for the purpose of carrying out section 1522(b)(5) of this title, for provisions with regard to fiscal 1980 and each of the two succeeding fiscal years authorizing appropriation of sums necessary for initial resettlement assistance, cash and medical assistance, and child welfare services under subsecs. (b)(1), (3), (4), (d)(2), and (e) of section 1522 of this title, and authorizing appropriations of $200,000,000 for other programs.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Refugee Assistance Extension Act of 1986, Pub. L. 99–605, see section 6(c) of Pub. L. 100–525, set out as a note under section 1522 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1522 of this title.

§ 1525. Repealed. Pub. L. 103–236, title I, § 162(m)(3), Apr. 30, 1994, 108 Stat. 409

Section, Pub. L. 96–212, title III, § 301, Mar. 17, 1980, 94 Stat. 109, related to appointment and duties of United States Coordinator for Refugee Affairs.

CHAPTER 13—IMMIGRATION AND NATURALIZATION SERVICE

Sec.
1551. Immigration and Naturalization Service.
1552. Commissioner of Immigration and Naturalization; office.
1553. Assistant Commissioners and one District Director; compensation and salary grade.
1554. Special immigrant inspectors at Washington.
1555. Immigration Service expenses.
1556. Transferred.
1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.