Presidential Determination No. 99–45, Sept. 30, 1999,
64 F.R. 54505.
Presidential Determination No. 98–39, Sept. 30, 1998,
63 F.R. 55001.
Presidential Determination No. 97–37, Sept. 30, 1997,
62 F.R. 53219.
Presidential Determination No. 96–59, Sept. 30, 1996,
61 F.R. 56889.
Presidential Determination No. 95–48, Sept. 29, 1995,
60 F.R. 53091.
EX. ORD. No. 12208. CONSULTATIONS ON THE ADMISSION OF REFUGEES
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 to the Secretary of State and the Secretary of Homeland Security, 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)).
1–102. 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).
1–103. 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.

§ 1158. Asylum
(a) Authority to apply for asylum
(1) In general
Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been indicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.
(2) Exceptions
(A) Safe third country
Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.
(B) Time limit
Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien’s arrival in the United States.
(C) Previous asylum applications
Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.
(D) Changed circumstances
An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).
(E) Applicability
Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 279(g) of title 6).
§ 1158

TITLE 8—ALIENS AND NATIONALITY

Page 110

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

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

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) 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;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).
(3) Treatment of spouse and children

(A) In general

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 this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1182(a)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(C) Initial jurisdiction

An asylum officer (as defined in section 1225(b)(1)(E) of this title) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 279(g) of title 6), regardless of whether filed in accordance with this section or section 1225(b) of this title.

(c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b) of this section, the Attorney General—

(A) shall not remove or return the alien to the alien’s country of nationality or, in the case of a person having no nationality, the country of the alien’s last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2) of this section;

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) the alien has voluntarily availed himself or herself of the protection of the alien’s country of nationality or, in the case of an alien having no nationality, the alien’s country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section 1182(a) and 1227(a) of this title, and the alien’s removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General’s costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the con-
sequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and
(B) provide the alien a list of persons (up-
dated not less often than quarterly) who have indicated their availability to repre-
sent aliens in asylum proceedings on a pro
bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph
(1) shall provide that—

(i) asylum cannot be granted until the
identity of the applicant has been checked
against all appropriate records or data-
bases maintained by the Attorney General
and by the Secretary of State, including
the Automated Visa Lookout System, to
determine any grounds on which the alien
may be inadmissible to or deportable from
the United States, or ineligible to apply
for or be granted asylum;

(ii) in the absence of exceptional circum-
stances, the initial interview or hearing on
the asylum application shall commence not
later than 45 days after the date an appli-
cation is filed;

(iii) in the absence of exceptional cir-
cumstances, final administrative adjudica-
tion of the asylum application, not includ-
ing administrative appeal, shall be com-
pleted within 180 days after the date an appli-
cation is filed;

(iv) any administrative appeal shall be
filed within 30 days of a decision granting
or denying asylum, or within 30 days of the
completion of removal proceedings before
an immigration judge under section 1229a
of this title, whichever is later; and

(v) in the case of an applicant for asylum
who fails without prior authorization or in
the absence of exceptional circumstances
to appear for an interview or hearing, in-
cluding a hearing under section 1229a of
this title, the application may be dis-
missed or the applicant may be otherwise
sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by reg-
ulation for any other conditions or limita-
tions on the consideration of an application
for asylum not inconsistent with this chap-
ter.

(6) Frivolous applications

If the Attorney General determines that an
alien has knowingly made a frivolous applica-
tion for asylum and the alien has received the
notice under paragraph (4)(A), the alien shall
be permanently ineligible for any benefits
under this chapter, effective as of the date of
a final determination on such application.

(7) No private right of action

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

(e) Commonwealth of the Northern Mariana Is-
lands

The provisions of this section and section
1159(b) of this title shall apply to persons phys-
ically present in the Commonwealth of the
Northern Mariana Islands or arriving in the
Commonwealth (whether or not at a designated
port of arrival and including persons who are
brought to the Commonwealth after having
been interdicted in international or United States
waters) only on or after January 1, 2014.

(June 27, 1952, ch. 477, title II, ch. 1, § 208, as
added Pub. L. 96–212, title II, § 201(b), Mar. 17,
V, § 515(a)(1), Nov. 29, 1990, 104 Stat. 5053; Pub. L.
103–322, title XIII, § 130005(b), Sept. 13, 1994, 108
title VI, § 604(a), Sept. 30, 1996, 110 Stat. 3009–690;
(b), May 11, 2005, 119 Stat. 302, 303; Pub. L. 110–229,

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(5)(B), (6), was
in the original, “this Act”, meaning act June 27, 1952,
ch. 477, 66 Stat. 163, known as the Immigration and Na-
tionality Act, which is classified principally to this
chapter. For complete classification of this Act to the
Code, see Short Title note set out under section 1101 of
this title and Tables.

AMENDMENTS

added subpar. (E).
subpar. (C).
2005—Subsec. (b)(1). Pub. L. 109–13, § 101(a)(1), (2), des-
ignated existing provisions as subpar. (A), inserted sub-
par. heading, and substituted “The Secretary of Home-
land Security or the Attorney General” for “‘The Attor-
ney General’ and “the Secretary of Homeland Security
or the Attorney General” for “the Attorney General”
in two places.
par. (B).
Subsec. (b)(2)(A)(v). Pub. L. 109–13, § 101(b), sub-
stituted “described in” for “inadmissible under” in two
places and struck out “removable under” before “sec-
tion 1227(a)(4)(B)”.
without change and amended text generally. Prior
to amendment, text read as follows: “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 this
subsection may, if not otherwise eligible for asylum
under this section, be granted the same status as the
alien if accompanying, or following to join, such
alien.”
“(III), (IV), or (VI)” for “(III), or (IV)”.
1996—Pub. L. 104–208 substituted “Asylum” for “Asy-
ylum procedure” as section catchline and amended text
generally, substituting subsecs. (a) to (d) for former
subsecs. (a) to (e).
Subsec. (a). Pub. L. 104–132, § 421(a), inserted at end
“‘The Attorney General may not grant an alien asylum
if the Attorney General determines that the alien is ex-
cludable under subclause (I), (II), or (III) of section
1182(a)(3)(B)(i) of this title or deportable under section
1251(a)(4)(B) of this title, unless the Attorney General
determines, in the discretion of the Attorney General,
that there are not reasonable grounds for regarding
the alien as a danger to the security of the United States.’’
1190—Subsec. (d), Pub. L. 101–619 added subsec. (d).

**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 706(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

**EFFECTIVE DATE OF 2005 AMENDMENT**


“(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect on March 1, 2005.

“(2) The amendments made by subsections (a)(3), (b), (c), and (d) [amending and section 1229a and 1231 of this title] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to applications for asylum, withholding, or other relief from removal made on or after such date.”

**EFFECTIVE DATE OF 2002 AMENDMENT**


**EFFECTIVE DATE OF 2001 AMENDMENT**

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

**EFFECTIVE DATE OF 1996 AMENDMENTS**

Section 604(c) of div. C of Pub. L. 104–208 provided that: “The amendment made by subsection (a) [amending this section] shall apply to applications for asylum filed on or after the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Sept. 30, 1996].

Section 421(b) of Pub. L. 104–132 provided that: “The amendment made by subsection (a) [amending section 1229 of this title] shall take effect on the date of the enactment of this Act [Apr. 24, 1996] and apply to asylum determinations made on or after such date.”

**EFFECTIVE DATE OF 1990 AMENDMENT**


“(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.

**REGULATIONS**


“(1) Issuance of regulations.—Not later than 60 days after the date of enactment of this Act [Oct. 3, 2008], the Attorney General and the Secretary of Homeland Security shall promulgate final regulations establishing that, for purposes of sections 241(b)(3)(B)(ii) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(3)(B)(ii); 8 U.S.C. 1158(b)(2)(A)(iii)), an alien who is deportable under section 237(a)(4)(F) of such Act (8 U.S.C. 1227(a)(4)(F)) or inadmissible under section 212(a)(3)(G) of such Act (8 U.S.C. 1182(a)(3)(G)) shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime.

“(2) Authority to waive certain regulatory requirements.—The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’), chapter 35 of title 44, United States Code (commonly referred to as the ‘Paperwork Reduction Act’), or any other law relating to rulemaking, information collection, or publication in the Federal Register, shall not apply to any action to implement paragraph (1) to the extent the Attorney General or the Secretary Homeland of (sic) Security determines that compliance with any such requirement would impede the expeditious implementation of such paragraph.”

**ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS**

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

**EXPEDITIOUS REMOVAL FOR DENIED ASYLUM APPLICANTS**


“(a) IN GENERAL.—The Attorney General may provide for the expeditious adjudication of asylum claims and the expeditious removal 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) $61,000,000 for fiscal year 1995;

“(2) $90,000,000 for fiscal year 1996;

“(3) $95,000,000 for fiscal year 1997; and

“(4) $51,000,000 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 204(b) of this title) [former subsec. (a) of this section] not later than June 1, 1980.”

§1159. Adjustment of status of refugees

(a) Inspection and examination by Department of Homeland Security

(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 Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or 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,